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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1920

No. [redacted] 288

BANK OF MINDEN, BANK OF WEBSTER, AND ROBERT ROBERTS, JR., PLAINTIFFS IN ERROR,

vs.

MRS. LOUIE CLEMENT, ADMINISTRATRIX OF THE SUCCESSION OF O. P. CLEMENT, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED FEBRUARY 4, 1921.

(27,661)

(27,461)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 706.

BANK OF MINDEN, BANK OF WEBSTER, AND ROBERT ROBERTS, JR., PLAINTIFFS IN ERROR,

vs.

MRS. LOUIE CLEMENT, ADMINISTRATRIX OF THE SUCCESSION OF O. P. CLEMENT, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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1 *Chronological Index to Proceedings Had in the Second Jud. Dist. Court, Parish of Webster.*

Second District Court, Webster Parish, Louisiana.

No. 68, Probate Docket.

SUCCESSION OF G. P. CLEMENT, DECEASED, on Opposition of Bank of Minden et al.

Chronological Index.

Sept. 12, 1917. Petition for appointment of Tutrix and under Tutor and Administratrix and for inventory, and order for inventory, filed.

Oct. 12, 1917. Inventory filed.

Oct. 15, 1917. Petition and order appointing Tutrix and Administratrix filed.

Oct. 19, 1917. Bond of Administratrix filed. Oath of Administratrix filed. Oath of Tutrix and Administratrix filed. Letters to Administratrix filed.

Dec. 4th, 1917. Petition and order to sell property filed.

Dec. 31, 1917. Commission to Sheriff to sell and returns on same filed.

Feb'y 16, 1918. Petition and order for supplementary inventory filed. Supplementary inventory filed.

Feb'y 27, 1918. Letters to Tutrix filed.

April 4, 1918. Account and tableau of debts filed.

April 17, 1918. Opposition of Bank of Minden to account and tableau filed.

Sept. 26, 1918. Opposition of Bank of Webster and Robert Roberts, Jr. to account and tableau filed.

Jan'y 4, 1919. Opposition of Mrs. Louie Clement, Tutrix to account and tableau filed. Petition of Administratrix asking for further time to administer and for order to deposit funds at interest filed.

Feb'y 24, 1919. Fixed for trial March 6, 1919.

Mch. 6th, 1919. Called and tried and taken under advisement.

Mch. 14, 1919. Judgment rendered, read, signed and filed. Orders of appeal to Supreme Court granted.

2 Second District Court, Webster Parish, La.

No. 68, Probate Docket.

SUCCESSION OF O. P. CLEMENT, DECEASED: Third Opposition of Bank of Webster and Bank of Minden.

Petition for Appointment of Tutrix and Under Tutrix and Administratrix.

Filed September 12, 1917, by Administratrix.

To the Hon. Judge of the 2nd Judicial District, Parish of Webster, Louisiana:

The petition of Mrs. Louie Clement of the Parish of Webster, La. with respect represents that O. Patterson Clement who was her husband has died and that his principal estate is in Webster Pb. La. where they resided.

That he left four minor children born of their marriage, to wit: Marion Luther, age 16, twin sister named Carrie Esther, same age; Frank Patterson, age 12 years and a younger son named Louie De Witt.

That his estate may be insolvent, as he owes a good many debts but the community has to be liquidated and without accepting same, reserving all legal rights, moves and prays to be appointed Administrator of the Succession and that a tutorship be opened for the minors, and, as their mother she be appointed Tutrix with their grandfather Frank M. Clement as the Under Tutor, and prays for commission to issue to take inventory of succession and tutorship and for it to be directed to Clerk of Court Parish of Webster, La. or Deputies and for this application to be advertised and for all orders necessary and general relief.

L. K. WATKINS,
Atty at Law.

L. K. Watkins, sworn, on oath states he is the Atty. at Law for petitioner and that all the facts and allegations in above petition are true.

L. K. WATKINS.

Sworn to and subscribed before me this Sept. 12th, 1917.
W. C. McKINNEY,
Dpy. Clerk Dist. Court, Parish Webster, La.

Let commission issue as prayed for and succession and tutorship be opened according to law, and application be advertised as directed by law.

3 Signed officially this Sept. 12th, 1917.

J. N. SANDLIN,
Judge.

Endorsed: Filed Sept. 12th, 1917. W. C. McKinney, Dy. Clerk D. C.

Second District Court, Webster Parish, La.

No. 68, Probate Docket.

SUCCESSION OF O. P. CLEMENT, and Tutorship of Minors: Third Opposition of Bank of Webster and Bank of Minden.

Commission to Take Inventory and Inventory.

Filed October 12th, 1917.

To J. F. McInnis, Deputy Clerk District Court:

By virtue of an order of the Honorable District Court, bearing date the 12th day of September, 1917 you are hereby authorized and empowered to take and make an estimate inventory of all the property real and personal, belonging to the succession of O. P. Clement, deceased, to be assisted by Messrs. E. R. Harrington and W. C. McKinney experts and apparisers appointed for that purpose by said District Court, and when you shall have so taken the same, be pleased to send a certified proces verbal of the same from under your hand, to us, the said District Court, Parish of Webster, without delay.

Witness the Honorable J. N. Sandlin, Judge of said Court, this 12th day of September, 1917.

W. C. McKINNEY,
Dy. Clerk Dist. Court.

Inventory.

We, the undersigned, appointed to appraise the property pointed out to us as belonging to the succession of O. P. Clement, deceased, do solemnly swear, that in making said appraisement we will act faithfully and impartially, and to the best of our knowledge and ability. So help me God.

E. R. HARRINGTON.
W. C. McKINNEY.

Sworn to and subscribed before me this 12th day of October, 1917.

J. M. McINNIS.
Dy. Clerk Dist. Court.

STATE OF LOUISIANA,
Parish of Webster:

By virtue of the annexed commission, I, J. F. McInnis, Dy. C. D. C. & Ex-Officio a Notary Public in and for said Parish and State, only commissioned and sworn, proceeded to take and inventory and cause an appraisement to be made of all the property pointed out to me as belonging to the succession of O. P.

4

Clement, deceased, situated in the said Parish, being assisted therein by E. R. Harrington and W. C. McKinney, good and competent appraisers, and in the presence of attesting witnesses, all of the Parish of Webster, which inventory and appraisement are as follows:

A tract of land commencing at the intersection of Pearl and McIntyre Streets as shown by the map of the Miller & Wattkins Addition to the town of Minden, made by J. M. Davies Parish Surveyor, run 60 degrees East along Pearl Street 240 feet; thence North 72 degrees East 107 feet; thence South 80 degrees East 285 feet; thence North 39 degrees East 111 feet; thence North 18 degrees West 207.5 feet; thence North 87 degrees West 521 feet; thence to point of beginning, 212 feet, appraised at	2,500.00
Penn Mutual Life policy No. 586676 for $2000.00, No Value.	
Penn Mutual policy No. 641533	3,000.00
La. Natl. Life policy No. 3055	2,000.00
1 Piano	100.00
7 Rockers	14.00
5 Chairs	5.00
3 Beds	15.00
3 Dressers	27.00
1 Dining Table	8.00
1 China Closet	15.00
1 Sideboard	10.00
1 Hall Tree	5.00
3 Center Tables	6.00
1 Art Square	1.00
1 Cow and Calf	30.00
12 Shares stock in Bistineau-Webster Oil Co.	300.00
N. Y. Life Policy No. 41020861 No value extended.	
N. Y. Life Policy No. 36837537 No value extended.	
	8,344.00

Recapitulation.

Real Estate	2,500.00
Personal property	5,844.00
Total Inventory	8,344.00

5 There being no other property pointed out as belonging to the said succession of O. P. Clement, deceased, I hereby close this inventory, amounting to Eight thousand, three hundred, forty-four Dollars.

Done and signed in said Parish of Webster in presence of the attesting witnesses, on this the 12th day of October, A. D. 1917.

E. R. HARRINGTON,
W. C. McKINNEY,
Appearers.

J. F. McINNIS,
Dy. C. D. C., & Ex Officio Notary Public.

Attest:
L. K. WATKINS.
JESSIE BEOPPLE.

Endorsed: Filed Oct. 12, 1917. J. F. McInnis, Dy. Clerk.

2nd Dist. Court, Webster Parish, Louisiana.

No. 68, Probate Docket.

SUCCESSION OF O. P. CLEMENT and Tutorship of the Minors.

Petition and Order Appointing Tutrix and Under Tutor and Administratrix.

Filed Oct. 15, 1917.

To the Hon. Judge of the 2nd Dist. Court, Parish of Webster, La.:

The petition of Mrs. Louie Clement of the Parish of Webster, La., surviving wife of the late O. Patterson Clement, and the mother of his minor children named in former petition on file, with respect represents that she has had an inventory made of the property and caused the extract or abstract of same to be recorded in the Mortgage book and has caused her application to administer the succession to be made according to law, and no opposition has been filed and she is entitled to be confirmed as Natural Tutrix to the minors and have grandfather F. M. Clement appointed Under Tutor for them as set forth in original petition and for letters as such and for tutorship to be issued as required by law.

That she is entitled to be appointed Administratrix of the succession and desires bond to be fixed according to inventory and according to law and that she be qualified and appointed Administratrix of the succession and letters issue to her as such Administratrix for the succession to be administered according to law.

L. K. WATKINS,
Att'y at Law.

6 Let the letters of tutorship be issued as prayed for and according to law, and it is ordered and decreed that Mrs. Louie Clement be appointed and qualified Administratrix of the succession of her deceased husband O. Patterson Clement and that letters of Administration issue to her when bond with surety is filed

and approved for amount fixed by law at one and $\frac{1}{4}$ the amount of the inventory of the property of the succession.

Signed officially this Oct. 15th, 1917.

J. H. TILLMAN,
Clerk 2nd Dist. Court, Parish of Webster, La.

Endorsed: Filed Oct. 15, 1917. J. F. McInnis, Dy. Clerk, D. C.

Webster Parish, Louisiana.

No. 68, Probate Docket.

SUCCESSION OF O. P. CLEMENT.

Administrator's Bond.

Filed October 19th, 1917.

STATE OF LOUISIANA,
Parish of Webster:

Be it known that we, Mrs. Louie Clement of Minden, Parish of Webster, La., surviving widow of the late O. Patterson Clement, as the principal and the United States Fidelity & Guaranty Company of Baltimore, Md., as surety, doing business in the State of Louisiana, acknowledge to owe and be indebted unto Judge Jno. N. Sandlin of 2nd Dist. Court, La., and J. H. Tillman, Clerk of Court, Parish of Webster, La., in the full sum of Ten thousand and five hundred dollars, and for its prompt payment we bind ourselves, and heirs and legal representatives firmly and in solido by this act.

Minden, La., Oct. 16, 1917.

Now this obligation is given as an Administrator's bond in the succession of O. Patterson Clement in 2nd Dist. Court, Parish of Webster, La., Mrs. Louie Clement, surviving widow being duly appointed his administrator subject to the filing of this bond, and this obligation is to be null and void if the said Mrs. Louie Clement the Administratrix of said succession shall well and faithfully administer same and account according to law for all the property, funds and money received by her for account of said succession and estate; otherwise to be of full force and effect in law with surety bound as such according to law.

Mrs. LOUIE CLEMENT,
Adm'x.
UNITED STATES FIDELITY & GUARANTY COMPANY,
By J. E. BLACK.

Endorsed: Filed Oct. 19, 1917. J. F. McInnis, Dy. Clerk, D. C.

2nd Dist., Webster Parish, Louisiana.

No. 68, Probate Docket.

SUCCESSION OF O. P. CLEMENT, Deceased.

Oath of Administratrix.

Filed October 19th, 1917.

STATE OF LOUISIANA,
Parish of Webster:

I, Louie Clement, do solemnly swear that I will well and faithfully fulfill the trust imposed on me as Administratrix of the succession of O. P. Clement, deceased to the best of my ability and understanding. So help me God.

MRS. LOUIE CLEMENT.

Sworn to and subscribed before me on this 19 day of Oct. A. D. 1917.

J. F. McINNIS,
Dy. Clerk, Dist. Court.

Endorsed: Filed Oct. 19th, 1917. J. F. McInnis, Dy. Clerk, D. C.

2nd Dist., Webster Parish, Louisiana.

No. 68, Probate Docket.

SUCCESSION OF O. P. CLEMENT, Deceased.

Letters to Administratrix.

Filed October 27th, 1917.

STATE OF LOUISIANA,
Parish of Webster:

This is to certify that Mrs. Louie Clement has been duly appointed and confirmed Administratrix of the succession of O. P. Clement, deceased, and has given bond as security and taken the oath as the law requires.

Now, therefore, the said Mrs. Louie Clement is hereby fully authorized and empowered to do and perform all and singular, the duties encumbent on her by law in said capacity.

In testimony whereof I hereunto sign my name and affix the seal of said Court, in my office at the town of Minden on this 27th day of October, A. D. 1917.

J. F. McINNIS,
Dy. Clerk, Dist. Court.

8 Endorsed: Filed Oct. 27, 1919. J. F. McInnis, Dy. Clerk, D. C.

2nd Dist., Webster Parish, Louisiana.

No. 68, Probate Docket.

SUCCESSION OF O. P. CLEMENT, Deceased.

Oath of Tutrix.

Filed October 19th, 1917.

STATE OF LOUISIANA,
Parish of Webster:

I, Mrs. Louie Clement do solemnly swear that I will well and faithfully fulfill the trust imposed on me as Tutrix to the minors Luther, Esther, Louie and Frank Clement to the best of my ability and understanding. So help me God.

MRS. LOUIE CLEMENT.

Sworn to and subscribed before me on this 19 day of Oct. A. D. 1917.

J. F. McINNIS,
Dy. Clerk, Dist. Court.

Endorsed: Filed Oct. 19th, 1917. J. F. McInnis, Dy. Clerk, D. C.

2nd Dist., Webster Parish, Louisiana.

No. 68, Probate Docket.

SUCCESSION OF O. P. CLEMENT, Deceased.

Letters to Tutrix.

Filed February 27th, 1918.

STATE OF LOUISIANA,
Parish of Webster:

This is to certify that Mrs. Louie Clement has been duly appointed and confirmed Tutrix to the minors Luther, Esther, Louie and Frank Clement, and taken the oath as the law requires.

Now therefore, the said Mrs. Louie Clement is hereby fully authorized and empowered to do and perform all and singular, the duties incumbent on her by law in said capacity.

In testimony whereof I hereunto sign my name and affix the seal of said Court, in my office at the town of Minden on this 27th day of Feby. A. D. 1918.

J. F. McINNIS,
Dy. Clerk, Dist. Court.

Endorsed: Filed Feby. 27, 1918. J. F. McInnis, Dy. Clerk, D. C.

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2nd Dist., Webster Parish, Louisiana.

No. 68, Probate Docket.

SUCCESSION OF O. P. CLEMENT, Deceased.

Petition and Order to Sell Property.

Filed December 4th, 1917.

To the Hon. Judge of the 2nd District, Parish of Webster, La.:

The petition of Mrs. Louie Clement, Administratrix in the above styled case, succession of her deceased husband, O. Patterson Clement, with respect represents that she has and does now renounce the community as the succession is insolvent, and moves and prays for an order to sell all the property both real and personal to pay debts.

Art. II.

Petitioner alleges further that the debts and claims aggregate about twelve thousand dollars and there are no funds to pay same and the money collected on insurance policies if applied to payment of debts or could be so applied according to law would not be sufficient to discharge them. That a sale is necessary to pay the debts and expenses of administration.

Art. III.

Petitioner further alleges that the Bank of Webster held a note secured by mortgage on the house and lot in Minden, La., and has proceeded by Executory Process to collect the debt, and if for any reason the sale is not made under orders granted, that the order granted for sale of property under this petition include and order for the sale of this property with all of other property.

Therefore moves and prays for an order to sell, and that a commission be issued directed to her as Administratrix to make the sale herself or by any auctioneer or Sheriff of the Parish of Webster, La. and for all orders necessary and for general relief.

L. K. WATKINS,
Att'y at Law for Petitioner.

L. K. Watkins sworn on oath states he is the Att'y for the Admx. and from information received and to best of his knowledge and belief all the facts and allegations in above petition are true.

L. K. WATKINS.

Sworn to and subscribed before me this December 4th. 1917.

J. F. McINNIS,
Dep'y. Clerk Dist. Court,
Parish of Webster, La.

10 *Order to Sell.*

By reason of the petition and affidavit and law and evidence being in favor thereof the order to sell the property both real and personal in the succession of O. Patterson Clement is granted as prayed for and according to law, and for carrying out the sale a commission is ordered issued to be directed to the Administratrix or the Sheriff A. H. Phillips as Ex-Off. Auctioneer of the Parish of Webster, La. to make the sale of all the property of the succession to pay debts, the sale of movables after ten days' advertisement at public auction as law directs, and real estate after thirty days' advertisement according to law. To be first offered at public auction for cash to highest bidder exceeding two thirds appraisement, and if no sale then readvertised and sold on terms of credit as provided by law.

Done and signed officially, this Dec. 4th. 1917.

J. N. SANDLIN,
Judge 2nd Dist. of La., Webster Pb.

Endorsed: Filed Dec. 4th. 1917. W. C. McKinney, Dy. Clerk D. C.

2nd Dist., Webster Parish, Louisiana.

No. 68, Probate Docket.

SUCCESSION OF O. P. CLEMENT, Deceased.

Petition and Order for Supplementary Inventory.

Filed February 16th. 1918.

To the Judge of the 2nd Judicial District, Parish of Webster, La.:

The petition of Mrs. Louie Clement the Admx. of the above styled succession with respect represents that in making the appraisement of the property, the property enclosed under fence as the home place or residence in Minden was included as one tract but the purchase of the property was in two separate deeds, one from L. K. Watkins and one from John Cameron.

The Bank of Webster held a mortgage against the house and the part of the place purchased from L. K. Watkins as more fully shown by act of mortgage and deed from L. K. Watkins, and the said Bank caused sale to be made under Executory Process pending administra-

tion, by which that part of place was disposed of, leaving the strip or land on the South or Southwest of place which was bought from John Cameron, without appraisement being made of it,-and under orders of Court for a sale, it is necessary to have it appraised
11 for sale, and your petitioner moves and prays for an order for the Clerk of Court under commission already granted to make an appraisement of said tract for purposes of sale, and for all orders necessary and for general relief.

L. K. WATKINS,
Atty at Law.

Let the appraisement be made as prayed for and according to law. Signed officially this the 16th day of Feb'y 1918.

J. N. SANDLIN.
Judge of 2nd Dist. Court.
Parish of Webster, La.

Endorsed: Filed Feb'y 16th, 1918. J. F. McInnis, Dy. Clerk D. C.

2nd Dist., Webster Parish, Louisiana.

No. 68. Probate Docket.

SUCCESSION OF O. P. CLEMENT, Deceased.

Supplemental Inventory.

Filed February 16th, 1919.

We the undersigned appointed to appraise the property pointed out to us as belonging to the succession of O. P. Clement, in this supplemental inventory, do solemnly swear, that in making said appraisement we will act faithfully and impartially, and to the best of our knowledge and ability. So help me God.

JOE R. MILLER.
J. S. HILMAN.

Sworn to and subscribed before me this 16th day of Feb'y 1918.

J. F. McINNIS.
Dy. Clerk D. C.

STATE OF LOUISIANA,
Parish of Webster:

By virtue of the annexed commission, I, J. F. McInnis, Dy. C. D. C. & Ex-Officio a Notary Public in and for said Parish and State, duly commissioned and sworn, proceeded to take an inventory and cause an appraisement to be made of all the property pointed out to me as belonging to the succession of O. P. Clement, in this supplemental inventory, situated in the said Parish, being assisted therein by Joe R. Miller and J. S. Hilman, good and competent appraisers, and in the presence of attesting witnesses, all of the Parish of Webster, which inventory and appraisement are as follows:

Beginning at a corner where the property of O. P. Clement and John Cameron join on College Street, thence
12 down the North side of College St. in a southwesterly direction parallel with College St. 30 feet; thence running back in a northwesterly direction 285 feet; thence run in a line at right angles in a northeasterly direction 16 feet to where said line intersects the line between the property of O. P. Clement and John Cameron; thence 285 feet to point of beginning, which property was included with and appraised with the O. P. Clement home place in the original inventory, but value not placed thereon, and now appraised separately by order of Court of date February 16th, 1918, appraised at $100.00

There being no other property pointed out as belonging to the said succession of O. P. Clement, deceased, I hereby close this inventory, amounting — One hundred dollars.

Done and signed in said Parish of Webster in presence of the attesting witnesses, on this the 16th day of February, A. D. 1918.

JOE R. MILLER.
J. S. HILMAN,
Appraisers.
J. F. McINNIS,
Dy. Clerk & Ex-Officio Notary Public.

Attest:

R. A. BAKER.
D. T. CLEMENT.

Endorsed: Filed Feb'y 16th, 1918. J. F. McInnis, Dy. Clerk D. C.

No. 68. Probate Docket.

2nd. Dist., Webster Parish, Louisiana.

SUCCESSION OF O. P. CLEMENT, Deceased.

Commission to Sell and Returns of Sheriff Thereon.

Filed Dec. 31st, 1917.

To Mrs. Louie Clement, Administratrix of — to A. H. Phillips, Sheriff and Ex-Officio Auctioneer of the Parish of Webster, Louisiana:

In the name of the State of Louisiana and by virtue of an order of the Honorable Second District Court, you or either of you are hereby commissioned and authorized to sell the property both real and personal belonging to the succession of O. Patterson Clement, deceased, to pay debts; the sale of movables after ten days' advertisement at public auction as the law directs; and the real estate after thirty days' advertisement according to law. To be first offered at public

auction for cash to the highest bidder exceeding two-thirds
13 appraisement, and if no sale then re-advertised and sold on terms of credit as provided by law.

Witness the Honorable J. N. Sandlin, Judge of our said Court at Minden, Louisiana, this 4th day of December, 1917.

W. C. McKINNEY,
Dy. Clerk D. C.

Returns of the Sheriff on Back of the Writ.

I received the within writ on the 4th day of December, 1917, and advertised the sale in the Webster Signal a newspaper published weekly in Minden, La. and after three publications in said paper I did on the 22nd day of December on Saturday during lawful sale hours according to writ of sale and according to advertisement and as the law directs, proceed to auction off the property advertised for sale, consisting of household goods, cow and calf, piano, shares of stock in Life Ins. Co. and in Oil Co. as advertised, and after offering the property sufficient length of time the sale being at the residence of the late O. P. Clement in Minden, La., I sold all the household furniture as advertised to Mrs. O. P. Clement at its appraised value amounting to $104.00, Piano $100.00, Cow and calf $40.00, she bidding full amount appraisement and only bidder at sale.

Shares of Life Ins. Co. stock 5 and fraction shares pledged to 1st. Natl. Bank Minden and sold subject to pledge and privilege of bank that is with understanding that it was necessary to pay the bank debt as a privilege or the bank should receive money in the sum bid made $87.25. No other bid made, so knocked off all above property and the shares of stock to Mrs. O. P. Clement for the total sum of $331.25, which she paid through Atty. L. K. Watkins and I hereby receipt him for said amount deducting following items of cost retained by me.

Printers charges	$6.00
Sheriff's fees	17.00

No bid on shares of stock in Bisteneau-Webster Oil Co. and credit sale is necessary. Also have to hold writ for sale of strip of land bought by O. P. Clement from John Cameron adjoining home place.

Witness my official signature this Dec. 31st, 1917.

A. H. PHILLIPS,
Sheriff.

Received settlement per above returns and statement, Jany. 1, 1918.
14

L. K. WATKINS,
Atty at Law, for the Administratrix,
Mrs. Louie Clement.

No. 68. Probate Docket.

2nd Dist., Webster Parish, Louisiana.

SUCCESSION OF O. P. CLEMENT, Deceased.

Account and Tableaux of Debts.

Filed April 4th, 1918.

To the Hon. Judge of the 2nd Judicial District, holding for the Parish of Webster, Louisiana.

Article I.

The petition of Mrs. Louie Clement of Minden parish of Webster La., until recently, but now living in Shreveport, La., duly appointed and qualified as Administratrix of the succession of her deceased husband, O. Patterson Clement, the mother and duly appointed Natural Tutrix to his minor children, Marion Luther and Esther, who are twins, and Frank Patterson and Louie DeWitt, with respect alleges and shows that the succession was insolvent and that your petitioner in accepting the Administration has and does now again judicially renounce the legal community and refuses to in any way bind herself for the debts of the succession.

Article II.

Petitioner, your Administratrix, further alleges that the Home Place or residence in Minden was inventoried, but the main part of it, including improvements was under mortgage to Bank of Webster, and was sold under orders of Court and the sale did not net anything for the succession and she did not receive as administratrix any of the funds derived from the sale, proceeds consumed by debt due Bank under foreclosure and cost and taxes paid out of the funds.

There was a small tract adjoining the Home Place sold later under orders of Court and her acct. shows proceeds of this part of the Home Place as stated below.

On policies of insurance due the estate made payable to the Executors and Administrators she has succeeded in collecting a total of $4443.33—Forty four hundred and thirty-three and 33/100 Dollars—deposited in Bank of Minden.

According to law this is not payable to creditors but is exempt from payment of debts and goes and must be paid to the heirs
15 at law and that the four surviving children of deceased O. P. Clement named above and Frank M. Clement surviving father under tutor to the minors being their grandfather, are heirs at law of the deceased O. P. Clement present residents of the State and subject to jurisdiction of the Court of Parish of Webster, La.

where they all resided when the succession and Tutorship was opened in October of year 1917. See Act 88 of 1916 amending and reenacting Act 179, 189 of 1914. Case succession of Le Blanc reported in vol. 8, Report 76 No. 1 page 223, Sept. ed. 8th, 1917.

Article III.

Wherefore, your petitioner, Administratrix has made up a tableaux of debts or accounts for approval and homologation to distribute funds of the estate on hand as stated and according to law and moves and prays for judgment therefor and for notice by publication and all orders necessary and general relief.

L. K. WATKINS,
Att'y at Law, for Administratrix.

Tableau of Debts.

Legal charges for administering succession, some accounts paid and to be paid both included	60.00
Per cent due Admx. which Att'y is not at this time authorized to waive	.....
Atty's fees due L. K. Watkins if account and tableau is contested and opposed, otherwise reduced	500.00
Charge for bons	42.00
Privileged charges for burial expenses, medical bills &c.	.....
Dr. E. B. Harrington account approved last sickness and expenses—see itemized account	150.00
Dr. E. B. Key medical bill last sickness	16.00
Burial expenses (account misplaced, amount to be supplied)	.....
Amount of claim due children and legal heirs of the deceased includes total of insurance collected	4,433.33
Subject only to legal deductions for privilege claims stated above and amount necessary to close succession, and not until other funds are exhausted	.....
Ordinary debts or claims, and no funds to pay same	.....
Account rendered by Bank of Webster showing list of notes aggregating $8198.50 with interest account $226.11 as of date Sept. 18th, 1917, less mortgage note collected by sale of Home Place $2387.20, reducing by that amount the above to	5,811.30
Note due Bank of Minden, aggregating some	1,800.00
Not as yet presented for approval and amount stated may have to be corrected	.....
Note due F. M. Clement—Interest to be added	511.00
Minden Cotton Oil & Ice Co. Ltd.	333.60
Note for small amount held by A. Glass and one by Crichton Co. but not yet presented and amounts not stated.	.....

Assets of Succession.

Amount collected on insurance policies payable to Administrator of Estate going to heirs of deceased as above recited in petition and approved as claim due heirs at law	1,433.33
Amount collected from Farm Loan Bank on salary due deed	61.61
Sale of Home Place property to Bank of Webster by Sheriff under Executory Process netted Estate nothing	.....
Sale of adjoining piece of land netted as per returns	74.95
Sale of movables under orders of Court netted	221.02
The total sale being reduced by payment of approved claim due 1st. Ntl. Bank which had pledge of shares of stock which had to be redeemed and your Admx. prays for approval of amount paid	87.25
Bistineau Oil Co. stock Co. stock credit sale to Tal Clement	250.00

Respectfully submitted,

L. K. WATKINS,
Att'y for Adm'x.

L. K. Watkins sworn on oath states he is the Att'y at Law for Mrs. Louie Clement the Adm'x and that she is absent and that he has made up the above tableau and account from data furnished him and has attempted to state a legal distribution of the funds according to the best of his knowledge, information and belief. That all the facts and allegations in petition are true to best of knowledge and belief.

L. K. WATKINS,
Att'y.

Sworn to and subscribed before me this the 4th day of April, 1918.
J. F. McINNIS,
By Clerk Dist. Court, Parish of Webster, La.

Let the filing of the tableau be made and notice given by publication according to law. Signed officially this 4th day of April, 1918.
J. F. McINNIS,
Chief Deputy Clerk D. C.,
Parish of Webster, State of La.

17 Endorsed: Filed April 4th, 1918. J. F. McInnis, Dy. Clerk, D. C.

No. 68. Probate Docket.

2nd Dist., Webster Parish, Louisiana.

SUCCESSION OF O. P. CLEMENT, DECEASED.

Opposition to Account and Tableau of Debts and Distribution by Bank of Minden, Opponent.

Filed April 17th, 1918.

To the Hon. the Judge of the Second Judicial District Court Sitting as a Court of Probate, in and for the Parish of Webster, State of Louisiana:

Now into Court comes the Bank of Minden, a banking corporation organized under the laws of the State of Louisiana and doing business and domiciled in the Parish of Webster, and opposes the account and tableau of debts and distribution in the above entitled succession of O. P. Clement filed by Mrs. Louie Clement, Administratrix, on the 4th day of April, 1918, on the following grounds:

I.

That your opponent is a creditor of the said succession in the sum of Eighteen hundred and twenty-five dollars, with interest and attorneys' fees for the following items and under the following circumstances.

II.

Opponent is the holder and owner of the following promissory notes made and signed by the deceased:

1 note for the sum of eleven hundred and twenty-five dollars, ($1,125.00) dated Nov. 20th, 1916, due May the 18th, 1917, bearing 8 per cent per annum interest from its date, and ten per cent attorneys' fees.

1 note for the sum of three hundred dollars ($300.00) dated March the 20th, 1916, due April the 12th, 1917, bearing 8 per cent per annum interest from its date and ten per cent attorneys' fees, with a credit of one hundred dollars thereon and interest paid to Mar. 22, 1917.

1 note for the sum of five hundred dollars ($500.00) dated April the 16th, 1916, due on demand, bearing 8 per cent per annum interest and ten per cent attorneys' fees, with a credit of inter-
18 est to April the 15th, 1917.

All of which more fully appears by and from said notes annexed hereto and made a part hereof in connection with succeeding allegations.

III.

Opponent shows that these several notes were all renewals of notes previously given and renewed many times, the original obligations being entered into some seven or eight years ago, certainly before May 1st, 1914.

IV.

Opponent further shows that at the time said O. P. Clement applied for and obtained the loans represented by the said notes and long before May, 1914, your opponent, inquired into, requested and demanded that said O. P. Clement should carry life insurance sufficient in amount to cover these and all other of his obligations, payable to his estate, and that said Clement assured your opponent that he carried or would carry said amount of insurance payable as demanded and requested, which he did in the policies named in the tableau of debts listed herein and aggregating the sum of four thousand four hundred and thirty-three & 33/100 dollars.

V.

Opponent further shows that said demand and promise of said Clement to carry insurance constituted a contract between opponent and said Clement, and was and is binding against the proceeds of said policies, and was before the enactment of Act 189 of 1914, as amended by Act 88 of 1916 good security for said obligations, and being made before the enactment of said acts of the General Assembly said obligations are binding against said policies of insurance as though said acts had never been enacted.

VI.

Opponent further shows that since the obligations herein claimed and set forth were entered into and based upon contracts with said Clement, as set forth above, prior to the enactment of the said acts above named, that said acts can have no effect upon said policies so far as they are applicable to these claims, which should be so held.

VII.

Opponent further shows that as to the obligations herein set up against this succession, the said acts 189 of 1914 and 88 of 1916 are unconstitutional, for the following reasons:

First. They are in violation of Article 156 of the Constitution of 1913 of the State of Louisiana, in that they impair the obligations of a contract.

Second. They are in violation of said Article 156 in that they divest the vested right of opponent in said policies.

Third. They violate Article 6 of said Constitution in that they deprive deponent of his right in said policies without due process of law.

Fourth. That said acts are in violation of Article 10 of the Constitution of the United States, in that they impair the obligation of the contracts herein set up, and which were entered into before the enactment of said laws.

VIII.

Deponent further opposes generally the whole tableau, except the item of its own claim, which is as herein set up, and it calls upon said Administratrix to make clear proof of all of said items and allegations.

IX.

Opponent further opposes said tableau on the ground that same is unintelligible, obscure and contradictory both in fact and law, particularly in that it marshals indiscriminately assets and liabilities, additions and subtractions, and while setting up the minor children of deceased as heirs also seems to set up the father of deceased as an heir.

Wherefore opponent prays that this opposition be filed. That said account be amended by placing thereon these claims of opponent as a creditor of the estate in the amount herein set forth in principal, interest and attorneys' fees and held to participate in the proceeds of the policies of insurance paid the estate of the deceased, and that said Acts 189 of 1914 and 88 of 1916 be held inapplicable to these claims, or as to them said acts be held unconstitutional, for the reasons above set forth in the body hereof; and that said account be further amended by striking therefrom all items which are not fully proved to be due, and that all other items be reduced to proper and reasonable amounts, and for general relief and costs.

W. R. PERCY.
Atty. for Opponent.

STATE OF LOUISIANA, PARISH OF WEBSTER.

I swear so help me God that all allegations herein are true and correct to the best of my information and belief.

W. R. PERCY.

Sworn to and subscribed before me this 17th day of April, 1918.

J. F. McINNIS.
Dy. Clerk D. C.

Endorsed: Filed April 17th, 1918. J. F. McInnis, Dy. Clerk D. C.

2nd Dist., Webster Parish, Louisiana.

No. 68, Probate Docket.

SUCCESSION OF O. P. CLEMENT, Deceased.

Opposition to Account and Tableau of Debts and Distribution by Bank of Webster and Robt. Roberts, Jr.

Filed Sept. 20th, 1918.

To the Honorable John N. Sutcliff, Judge of the Second District Court, Sitting as a Court of Probate, in and for the Parish of Webster, State of Louisiana:

Now into Court comes the Bank of Webster, and Robert Roberts, Jr., and oppose the account and tableau of debts and distribution in the above entitled succession of O. P. Clement, filed by Mrs. Louie Clement, Administratrix, on the 4th day of April, 1918, on the following grounds:

I.

That your opponent, the Bank of Webster, is a creditor of said succession, in the sum of Six hundred ($600.) Dollars, with interest and attorney's fees; said interest being at the rate of eight per cent (8%) per annum from April 10th, 1917, until paid, and said attorney's fees being 10% of the amount of the said note.

II.

Your opponent, Bank of Webster, shows that it is the holder and owner of said above mentioned note, which is for the sum of $600.00 dated January 13th, 1917, due April 10th, 1917, bearing 8% per annum interest from its date and 10% attorney's fees; said note being for a loan made to O. P. Clement, having been signed jointly by O. P. Clement and Robert Roberts, Jr., all of which more fully appears from said note, which is hereto referred to and made part hereof by reference.

III.

Opponent shows that said note was first made and signed
21 by the said O. P. Clement and Robert Roberts, Jr., for the sum set out above, during the month of February in the year of 1913, and that the note above referred to is now held by opponent, the Bank of Webster, as the result of many renewals of the original obligation entered into by said opponents, with said O. P. Clement in February of the year 1913, and that none of the principal on same has ever been paid.

IV.

Your opponents further show that the time at which said O. P. Clement applied for and obtained the loan, represented by the said above described note, was long before May, 1914; that the said Clement represented to opponents, the Bank of Webster and Robert Roberts, Jr., that he, the said Clement carried life insurance payable to his estate, sufficient in amount to cover this and all other obligations, and the said Clement assured your opponents that he would continue to carry insurance sufficient to protect all of his creditors until his debts were paid, which he did in the policies named in the tableau of debts listed herein and aggregating the sum of four thousand four hundred thirty-three and thirty-three hundredths dollars ($4433.33).

V.

Opponents further show that said demand and promise on the part of said Clement to so carry insurance constituted a contract between opponents and said Clement, and was and is binding against the proceeds of said policies, and was before the enactment of said act 189 of 1914 as amended by act 88 of 1916, good security for the payment of said obligations and being made before the enactment of said act of General Assembly, said obligations are binding against said policies of insurance as though said acts had never been enacted.

VI.

Your opponent, Robert Roberts, Jr., shows that, but for the representation and agreement that the said Clement was carrying and would continue to carry insurance payable to his estate sufficient to pay all of his debts, he would have declined to bind himself with said Clement for the payment of said note, which was given wholly for the benefit of the said Clement in February of 1913.

VII.

Said opponent, Robert Roberts, Jr., further shows that
22 the loan thus procured for the benefit of said Clement was at a time before the enactment of Act 189 of 1914 as amended of Act 88 of 1916, and that after first signing said note in the year of 1913, your opponent has been compelled to sign renewals from time to time or else himself pay said note in full.

VIII.

Opponent further shows that as to the obligation herein set up, as to this succession, the said Act 189 of 1914 and 88 of 1916 are unconstitutional for the following reasons:

First. They are in violation of Article 166 of the Constitution of 1913 of the State of Louisiana, in that they impair the obligation of a contract.

Second. They are in violation of said Article 166, in that they divest the vested right of opponent in said policies.

Third. They violate Article 6 of said Constitution in that they deprive opponent of his right in said policies without due process of law.

Fourth. That said acts are in violation of Article 10 of the Constitution of the United States, in that they impair the obligation of the contracts herein set up, and which were entered into before the enactment of said laws.

IX.

Opponents further oppose generally the whole tableau, except the items of their own claim, which is herein set up and it call upon said Administratrix to make clear proof of all said items and allegations.

X.

Opponents further show that since the note herein set forth, and claimed upon, was entered into and based upon a contract with said Clement as set forth above by said Bank of Webster and Robert Roberts, Jr., prior to the enactment of said Act- of 1914 and 1916 above named, that said Acts can have no effect upon said policies in so far as the claim of opponents are concerned; and that it should be so held.

XI.

Opponents further oppose said tableau on the ground that same is unintelligible, obscure and contradictory and for the reason that same while it sets up the minor children as the heirs, also seems to set up the father of deceased as an heir.

23 XII.

Opponent, Bank of Webster, especially reserves and does not waive any of its rights against Robert Roberts, Jr.

Wherefore, opponents pray that this opposition be filed, that said account be amended by placing thereon the claim of opponent as a creditor of the estate, in the sum of $500.00, with interest from April 10th, 1917, until paid and 10% attorney's fees, and held to participate in the proceeds of the policies of insurance paid the estate of the deceased, and that said act 189 of 1914 and 88 of 1916 be held unconstitutional and inapplicable to the claim set up by these opponents or that as to them, said act be held unconstitutional

for the reasons set forth in the body hereof; and that said account be further amended by striking therefrom all items which are not fully proved to be due and that all other items be reduced to proper and reasonable amounts and for all cost and general relief.

ROBERTS, ROBERTS & JOHNSON.

Affidavit.

STATE OF LOUISIANA,
Parish of Webster:

Robert Roberts, Jr., being first duly sworn, deposes and says: That he is of counsel for the above opponent, and that he is one of the opponents; and that all of the allegations contained in the above opposition are, to the best of his knowledge, true and correct.

ROBERT ROBERTS, JR.

Sworn to and subscribed before me this 7th day of May, 1918.

CHAS. M. ROBERTS,
Notary Public.

Endorsed: Filed Sept. 26th, 1918. J. F. McInnis, Dy. Clerk D. C.

2nd Dist., Webster Parish, Louisiana.

No. 68, Probate Docket.

SUCCESSION OF O. P. CLEMENT, Deceased.

Opposition of Mrs. Louie Clement, Tutrix to the Minors, to the Account and Tableau.

Mrs. Louie Clement, the Tutrix for the minors Luther Clement, Esther Clement, Frank P. Clement and Louis DeWitt Clement, direct heirs of O. P. Clement, born of her marriage with said
24 O. P. Clement, appears by counsel or rather through counsel to assert, claim and collect the proceeds of all policies of insurance and money and the funds derived from all policies of insurance on the life of O. P. Clement made payable to his estate, succession, executors and administrators for the account of and due his said minors as his direct heirs, which she feels obliged to claim and has no right or authority in law to in any way waive or relinquish.

Therefore alleges and shows that the said minors under the law as enacted, and construed by the Supreme Court of the State, are entitled to receive all the money and funds derived from policies on the life of O. P. Clement, deceased payable to the Administrator or that may be collected by the Administratrix in this case and all of the $4,433.33 shown by the account and tableau of said Administratrix as money derived from policies on his life and same is due to them in full not subject to deductions for payment of debts due by the deceased or his estate.

Wherefore moves and prays that the account and tableau setting aside the funds derived from collection of policies in the sum of $4,433.33 as due to the legal heirs of O. P. Clement and all money that may be derived from collection of insurance policies on his life payable at his death to his Administrators or Executors according to the statutes of the State of Louisiana enacted therefor be ordered paid to the minors alleged herein or their legal representatives for them and for their account, and that they and she as their legal representative have judgment therefor rejecting all other claims of creditors to be paid out of said funds and decreeing the accounts and claims of opposing creditors, Bank of Minden, Bank of Webster and Robert Roberts, Jr., as ordinary debts of deceased having no interest in distribution of said funds or legal claim or privilege to same and to this extent that your petitioner be allowed to join the Administratrix in support of her account and tableau of debts and prays for all orders and decrees necessary and for rejection of demands of opponents alleged and for general relief.

L. K. WATKINS,
Att'y at Law, for the Tutrix.

L. K. Watkins, sworn on oath, states that Mrs. Clement is absent at present and to best of his knowledge, opinion and belief the facts and allegations in above petition and opposition are true and correct.

L. K. WATKINS.

25 Sworn to and subscribed before me this the 4th day of Jany., 1919.

J. F. McINNIS,
Dy. Clerk D. C., Parish of Webster, La.

Endorsed: Filed Jany. 4th, 1919. J. F. McInnis, Dy. Clerk, D. C.

2nd Dist., Webster Parish, Louisiana.

No. 68, Probate Docket.

SUCCESSION OF O. P. CLEMENT, Deceased.

Petition of Administratrix Asking for Further Time to Administer Estate and to be Allowed to Deposit Funds at Interest, New Bond, &c.

Filed Jany. 4th, 1919, by Administratrix.

To the Hon. Judge of the 2nd District Court, Parish of Webster:

The petition of Mrs. Louie Clement, the Administratrix of the estate and succession of O. P. Clement, with respect alleges and shows she proceeded as speedily as possible in the administration of the succession but was retarded by reason of oppositions made to her tableau of distribution and by reason of her inability to get a trial

of same on account of adjournment of Court, continuances granted opponents and other causes.

Wherefore moves and prays for extension of time to administer the succession pending legal delays and for orders therefor and for general relief.

2nd.

Further alleges that pending final decision of oppositions to her account and tableau she be allowed to deposit the funds of the succession in some bank paying highest rate of interest on deposits that will be safe for claimants of funds, and to designate the depositary and for such change in bond and securities as may be required according to law, and prays for judgment therefor and for general relief.

L. K. WATKINS,
Att'y for Adm'x of Succession of O. P. Clement.

Endorsed: Filed January 4th, 1919. J. F. McInnis, Dy. Clerk D. C.

26 2nd Dist., Webster Parish, Louisiana.

No. 68, Probate Docket

SUCCESSION OF O. P. CLEMENT, Deceased.

Insurance Policy Issued by Penn Mutual Life Insurance Company to O. Patterson Clement, Dated June 19, 1912.

Filed in Evidence March 6, 1919, on Part of Opponent Bank of Minden, and Marked "1" for Identification; and Marked Deponent "6" in Evidence.

The Penn Mutual Life Insurance Company of Philadelphia.

Number 586677. Amount $3,000.00.

In consideration of the application for this policy, which is made a part hereof, The Penn Mutual Life Insurance Company insures the life of O. Patterson Clement of Minden, County of Webster, State of Louisiana, in the sum of Three Thousand Dollars, and promises to pay at its home office, in the city of Philadelphia, unto his executors, administrators or assigns, the said sum insured, upon receipt of due proof of the death of the insured, during the continuance in force of this policy, upon the following conditions namely: The payment in advance to the Company at its Home Office of the sum of Fifty seven & 78/100 Dollars at the date hereof, and of the semi-annual premium of Fifty-seven & 78/100 Dollars at or before three o'clock P. M., on the twenty-fourth day of November and May in every year during the life of the insured, or until twenty full years'

premiums shall have been paid. The anniversary month of this policy is May.

The right of revocation is reserved by the insured. When the right has been reserved, the insured shall have full power while this policy is in force (subject to any previous assignment) to change the present beneficiary or beneficiaries. Such change shall be made in writing and shall be valid only upon its endorsement on this policy by the Company at the Home Office.

This policy shall participate annually in surplus earnings in accordance with its provisions.

The extended insurance, paid-up insurance, and loan or cash surrender value privileges, benefits, and conditions stated on the second page hereof form a part of this policy as fully as though recited at length over the signatures hereto affixed

27 In witness whereof the Penn Mutual Life Insurance Company of Philadelphia has caused this policy to be signed by its President, Secretary and actuary, attested by its Registrar, at its Home Office in Philadelphia, Pennsylvania, the nineteenth day of June, 1912.

GEO. K. JOHNSON,
President.
J. BURNETT GIBBS,
Actuary.

JOHN HUMPHREY,
Secretary.
A. G. GREENE,
Registrar.

(On the margin of policy): Age 37. Sum insured $3,000.00. Yearly premium $115.76 for twenty years. Limited payment Life Policy. Annual Dividends. Examined by O. W. S.

From the date of issue this policy shall be without any restriction as to travel, residence and occupation.

I. Payment of premiums. All premiums are due and payable in advance at the Home Office of the Company in the City of Philadelphia, or they may be paid to Agents on or before the dates when due in exchange for receipts signed by the President, Vice President, Secretary, Treasurer, or Actuary, and countersigned by agent.

Any unpaid portion of the year's premium will be deducted from the sum payable under this policy.

II. Grace in payment of premiums. After the first, any premium on this policy will be accepted within thirty one days from its due date. During said period the policy shall remain in force, but in the event of death the overdue premium will be deducted.

III. Incontestability. This policy and the application therefor, a copy of which is attached hereto, constituting the entire contract between the parties shall be incontestable after one year from its date of issue, except for non-payment of premiums; but in case of

suicide, whether sane or insane, within one year from the date of this policy, the liability of the Company shall be limited to the amount of the premium paid hereon.

IV. Statements. All statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties and no such statement shall avoid or be used in defence under the policy unless it is contained in the written and printed application and a copy of such application is attached to the policy when issued.

V. Age. Any error in stating the age of the insured will be adjusted by the Company paying such amount as the premium actually paid would have purchased at the table rate at the correct age.

28 VI. Dividends of surplus. This policy shall participate in surplus, and upon payment of the second year's premium and at the end of the second and of each subsequent policy year, while the policy is in force by payment of premiums and thereafter when full paid, the Company will determine and account for the portion of the divisible surplus accruing thereto. These dividends at the option of the insured will be applied in any year to reduce the premium, to increase the amount of insurance, or to accumulate to the credit of the policy at three percent compound interest per annum, which accumulation will be payable at the maturity of the policy, or may be withdrawn at any premium anniversary. If no other option is selected, dividends shall be paid in cash.

VII. Loans. After three full years premiums have been paid the Company at any time while the policy is in force will advance, on proper assignment of the policy and on the sole security thereof, at 5 per cent interest per annum, a sum, at the option of the insured or owner of the policy, equal to or less than the full reserve at the end of the current policy year on the policy and any dividend additions thereto according to the American Experience Table of Mortality, with interest at 3 per cent per annum. There shall be deducted from such loan value any existing indebtedness on the policy and any unpaid balance of the premium for the current year and interest shall be payable in advance on the loan to the end of the current Policy year. Failure to repay any such loan or advance to pay interest shall not void the Policy unless the total indebtedness thereon shall equal or exceed such loan value at the time of such failure nor until one month after notice shall have been mailed by the Company to the last known address of the insured and of the person to whom the loan was made, and of any assignee known to the Company.

VIII. Non-Forfeiture. If this policy shall lapse through non-payment of premiums after three years' premiums have been paid, the Company will secure to the owner thereof a form of insurance, the net value of which shall be equal to the full reserve on the policy and on any dividend additions thereto at the date of default, according to the American Experience Table of Mortality, with interest at 3 per cent, less any existing indebtedness to the Company on the Policy.

At the end of the third and succeeding years the cash value
29 is the full reserve, and the paid up and extension values are the equivalents thereof. The stipulated values of *this* policies shall be correspondingly increased for any fraction of a year's premium which has been paid. This non-forfeiture value shall be secured to the owner of the policy through one of the following provisions:

First. The automatic extension of the net amount insured by this policy for the number of years and days stated below, at the expiration of which time the insurance shall cease, or,

Second. The issue of paid-up participating insurance payable at death for the sum provided for below upon written application therefor by the owner of the policy and the legal surrender of all claims hereunder to the Company at its Home Office within one month after lapse, or,

Third. The payment of the cash surrender value provided for below on surrender of the policy and all claims hereunder to the Company within one month from the date of lapse.

IX. This is a table showing paid up, Extension and Loan or Cash Values for the different years after the policy has been in force three years.

X. Reinstatement. In the event of default in premium payments, unless the cash value has been duly paid, it is agreed that this policy may be reinstated at any time upon evidence of insurability satisfactory to the Company and the payment of all overdue payments and the payment or reinstatement of any other indebtedness to the Company upon said policy, with interest at the rate of not exceeding six per cent per annum.

XI. When this policy shall become a claim by the death of the insured, settlement less any indebtedness on the policy, will be made upon due proof of death.

XII. Instalment tables. The amount of this policy when it becomes a claim may be made payable at the option of the beneficiary unless otherwise directed by the insured in writing filed with the Company, in such number of instalments, two to thirty, as may be chosen in accordance with Table A of instalment values printed below.

Similarly, the amount of the policy when it becomes a claim may be made payable in annual instalments for twenty years guaranteed and as much longer thereafter as the beneficiary may live, in accordance with Table B of instalment values printed below.

30 These tables are based upon a policy, the proceeds of which are one thousand Dollars, and apply pro rata to this policy. (Here follows tables A and B showing amount of instalments mentioned above.)

The instalments under Table A, or the instalments-certain under

Table B, after the first, will be increased by such surplus annually as may be apportioned by the Company.

The commuted value of any unpaid instalments under Table A of the commuted value of any unpaid instalments-certain under Table B will be calculated by the Company at any time upon the same basis (3% compound interest) as the instalments were granted, and will be paid to the owners of the policy upon request and proper release.

XIII. Interest privilege. The proceeds of this policy or any designated fraction thereof, may at maturity, be allowed to remain with the Company until the death of the beneficiary, during which period the Company will pay to the beneficiary yearly, three per cent on the amount so held, the first payment being made one year after maturity of this policy and the last payment to be pro rated to the death of the beneficiary. The interest rate will be improved annually by such addition as may be awarded by the Board of Trustees. At the time any such interest becomes payable the beneficiary may withdraw the amount held by the Company, thus terminating this feature.

XIV. Assignment. Any assignment of this policy shall be furnished to the Company and a duplicate thereof attached hereto. Any claim against the Company, arising under any assignment of this policy shall be subject to proof of interest. No assignment shall impose any obligation on this Company until it has received the original thereof, nor does the Company guarantee the sufficiency or validity of any assignment.

XV. After the third year if any premium on this policy, annual semi-annual or quarterly, be not paid when due or within the period of grace, the Company will charge against the loan value of this policy such premium with 5 per cent interest per annum in advance, provided that such loan value is sufficient. The balance of value, if any, not thus used, shall be applied in accordance with the provisions of Section VIII hereof, and any premium loan so made shall be subject to the terms of Section VIII. This action
31 of the Company is contingent upon the request for such premium loan being filed by the owner of the policy at the Home Office while there is no default in the payment of any premium, and such request is revocable as to any future premium.

XVI. Pursuant to law, a copy of the application for this policy is attached hereto. No alteration of this policy or waiver of any of its conditions shall be valid unless made in writing and signed by an officer of the Company.

(The application is attached to the policy, but shows no terms or conditions not stated in the policy.)

Endorsed: Filed in evidence on part of Bank of Minden, opponent, March 6th, 1919. Marked Opponent "1" for identification and Opponent "6" in evidence. J. F. McGinnis, Dy. Clerk D. C.

No. 68, Probate Docket.

2nd. Dist., Webster Parish, Louisiana.

SUCCESSION OF O. P. CLEMENT, Deceased.

Note, Dated January 13th, 1917, Signed by O. P. Clement and Robert Roberts Jr. in Favor of Bank of Webster.

Filed in Evidence on Part of Bank of Webster, Opponent, and Marked "Opponents "2." March 6th, 1919.

$600.00 Minden, La. Jan. 13th, 1917.

On April 10th, 1917 after date I promise to pay to the order of the Bank of Webster Six Hundred Dollars for value received, with interest at the rate of 8 per cent per annum after due until paid with 10 per cent attorney's fees for collection if not paid when due. Negotiable and payable at Bank of Webster. Having deposited as collateral security —.

And in case this note shall not be paid when due, the holder is authorized to sell said collaterals, or any part thereof, at any time thereafter at public or private sale without advertising same or giving notice, and to apply the net proceeds after paying all expenses, to the payment of this note; and if at any time before the maturity of this note, said collaterals should depreciate below their present value which is today estimated at at least 5%, more than this debt, said holder shall have authority to demand additional security, and if not furnished when so demanded, either in person or through notice left at — place of business or residence, or notice through the
32 postoffice, this note shall immediately become due and the holder is thereby authorized to sell said collaterals at any time thereafter in the manner heretofore stated, and I hereby waive service citation and time, and confess judgment in favor of the said Bank of Webster, any lawful holder thereof in the above sum, including all interest, costs and 10 per cent attorneys' fees as above stipulated.

O. P. CLEMENT.
ROBERT ROBERTS, Jr.

Endorsed Filed in evidence and marked Opponents "2" March 6th, 1919. J. F. McInnis, Dy. Clerk D. C.

No. 68. Probate Docket.

2nd. Dist., Webster Parish, Louisiana.

SUCCESSION OF O. P. CLEMENT, Deceased.

Three Notes Signed by O. P. Clement in Favor of Bank of Minden, Dated March 22, 1916, April 15, 1916, and Nov. 20, 1916.

Filed in Evidence March 6, 1919, on Part of Bank of Minden, Opponent, and Marked Opponent 3, 4 and 5.

Minden, Louisiana, March 22, 1916.

Demand after date for value received we the signers, endorsers, guarantors and sureties and each of us in solido promise to pay to the order of Bank of Minden Three Hundred Dollars $300.00 at Bank of Minden, Minden, Louisiana, with interest at the rate of eight per cent per annum from date until paid.

The makers, endorsers, guarantors and sureties of this note hereby severally waive presentation for payment, demand, notice of non-payment and protest, all pleas of division or discussion, and consent that time of payment may be extended without notice thereof and in the event of non-payment at maturity, it is agreed to pay all attorneys' fees incurred in the collection of this note, or any portion thereof, including interest, which fees are hereby fixed at ten per cent on the amount to be collected. The makers, endorsers, guarantors and sureties of this note, hereby severally authorize the Bank of Minden, of Minden, Louisiana to pay this note at maturity or at any time thereafter charging the amount first to the account of the principal debtor, and in the event of the account of the principal debtor being insufficient, then to the account of any endorser, guarantor or surety, it being expressly understood and agreed that the said Bank is to have the option of paying or not paying this obligation at its discretion and without liability on its part to the said makers, endorsers, sureties and guarantors for non-payment, when the option to pay is not exercised. The holder of this note shall have the right at any time to set off with the same any amount that either the maker, endorsers or guarantors shall have on deposit with it, whether such deposit be special or general, whether said note is then due or not.

O. P. CLEMENT.

Due Demand.
P. O. Address, Minden, La.
Credit on the back of said note: Int. paid to 3/22/17. Credit 1/12/17, $100.00

Endorsed: Filed in evidence and marked Opponent 4. March 6, 1919. J. F. McInnis, Dy. Clerk, D. C.

Minden, Louisiana, April 15, 1916.

Demand after date for value received we the signers, endorsers, guarantors and sureties and each of us in solido promise to pay to the order of Bank of Minden Five Hundred Dollars $500.00 at the Bank of Minden, Minden, Louisiana, with interest at the rate of eight per cent per annum from date until paid.

The makers, endorsers, guarantors and sureties of this note hereby severally waive presentation for payment, demand, notice of non-payment and protest, all pleas of division or discussion, and consent that time of payment may be extended without notice thereof and in the event of non-payment at maturity, it is agreed to pay all attorneys-fees incurred in the collection of this note, or any portion thereof, including interest, which fees are hereby fixed at ten per cent on the amount to be collected. The makers, endorsers, guarantors and sureties of this note hereby severally authorize the Bank of Minden of Minden, Louisiana to pay this note at maturity or at any time thereafter charging the amount first to the account of the principal debtor, and in the event of the account of the principal debtor being insufficient, then to the account of any endorser, guarantor or surety, it being expressly understood and agreed that the said Bank is to have the option of paying or not paying this obligation at its
34 discretion and without liability on its part to the said makers, endorsers, sureties and guarantors for non-payment, when the option to pay is not exercised. The holder of this note shall have the right at any time to set off with the same any amount that either the maker, endorsers or guarantors shall have on deposit with it, whether such deposit be special or general, whether said note is then due or not.

O. P. CLEMENT.

Endorsed on the back: Int. paid to 4/15/17.
Endorsed: Filed in evidence March 6th, 1919, and marked Opponent's "3." J. F. McInnis, Dy. Clerk, D. C.

Minden, Louisiana, Nov. 20, 1916.

On May 18, 1917 after date for value received we the signers, endorsers, guarantors and sureties and each of us in solido promise to pay to the order of Bank of Minden Eleven hundred & twenty-five Dollars $1125.00 at Bank of Minden, Minden, Louisiana, with interest at the rate of eight per cent per annum from date until paid.

The makers, endorsers, guarantors and sureties of this note hereby severally waive presentation for payment, demand, notice of non-payment and protest, all pleas of division or discussion, and consent that time of payment may be extended without notice thereof and in the event of non-payment at maturity, it is agreed to pay all attorneys' fees incurred in the collection of this note, or any portion thereof, including interest, which fees are hereby fixed at ten per cent on the amount to be collected. The makers, endorsers, guarantors and sureties of this note hereby severally authorize the Bank of Minden of Minden, Louisiana to pay this note at maturity or at any

time thereafter charging the amount first to the account of the principal debtor, and in the event of the account of the principal debtor being insufficient, then to the account of any indorser, guarantor or surety, it being expressly understood and agreed that the said Bank is to have the option of paying or not paying this obligation at its discretion and without liability on its part to the said makers, endorsers, sureties and guarantors for non-payment, when the option to pay is not exercised. The holder of this note shall have the right at any time to set off with the same any amount that either the maker, endorsers or guarantors shall have on deposit with it, whether such deposit be special or general, whether said note is then due or not.

35 O. P. CLEMENT.

Endorsed: Filed in evidence March 6th, 1919, and marked Opponent "5." J. F. McInnis, Dy. Clerk, District Court.

Second District Court, Webster Parish, Louisiana.

No. 68, Probate Docket.

SUCCESSION OF O. P. CLEMENT, Deceased; Opposition of Bank of Minden et al.

Minutes of the District Court.

Monday, February 24, 1919.

Case fixed for trial Thursday, March 6th, 1919.

Thursday, March 6, 1919.

J. S. Atkinson, Esq. appears as attorney of record for the Bank of Minden, succeeding W. E. Percy, Esq., deceased. This case is called for trial. R. B. Cook is qualified as stenographer herein and the trial is proceeded with until the conclusion of the evidence and the argument, and taken under advisement.

Friday, March 14, 1919.

There is judgment for opponents, Bank of Webster and Bank of Minden, and homologating account of Administratrix. See decree. Judgment signed and filed. Oral motion is made for appeals by counsel for the Administratrix and Tutrix. Orders of Appeal granted. Appeal made returnable to the Honorable Supreme Court of Louisiana at New Orleans, Louisiana on Monday, April 7th, 1919. Devolutive appeal bond fixed at Two Hundred Dollars ($200.00), and suspensive according to law.

36 Second District Court, Webster Parish, La.

No. 68, Probate Docket.

SUCCESSION OF O. P. CLEMENT, Deceased; Opposition of Bank of Minden et al.

Judgment for Opponents, Bank of Minden and Bank of Webster and Judgment Homologating Final Account.

Filed March 14, 1919.

This cause having come up regularly for trial on the oppositions herein filed by the Bank of Webster and Robert Roberts, Jr., and by the Bank of Minden, to the account herein presented by Mrs. Louis Clement, Administratrix of this estate, on the 4th day of April, in the year of 1918, and after hearing the pleadings, evidence and argument of counsel, and after taking the matter under advisement, the law and the evidence being in favor thereof, for the reasons orally assigned by the Court:

It is ordered, adjudged and decreed, that the opposition of opponents, Bank of Webster and Robert Roberts, Jr., be maintained, and accordingly, that the said account be amended by placing thereon the said opponents as creditors in the sum of Six Hundred ($600.00) Dollars, with interest at the rate of eight per cent per annum from April 10th, 1917, until paid and ten per cent attorney's fees on said sum, with interest, and that to the extent of said sum, interest and attorney's fees, said opponents are hereby decreed as entitled to participate in and be paid out of the proceeds of the policies of insurance paid the estate of the deceased, with cost of this opposition.

It is further ordered, that the opposition of the Bank of Minden be maintained and that, accordingly the said account be amended by placing thereon the said Bank of Minden as a creditor for the sum of eighteen hundred and twenty-five & no 100 ($1,825.00) Dollars, with interest and attorney's fees in accordance with the tenor of its three promissory notes as follows:

One note for the sum of $1,125.00, dated November 20th, 1916, due May 18th, 1917 with 8% per annum interest from its date and 10% attorney's fees; One note for the sum of $300.00, dated March 20th, 1916, due April 12th, 1917, bearing 8% per annum interest from its date and 10% attorney's fees, with a credit of $100.00 thereon, and interest paid to March 22nd, 1917; One note for the sum of $700.00 dated April 16th, 1916, due on demand, bearing 8% per annum interest and 10% as attorney's fee with a credit of interest to April 15th, 1917.

It is further ordered, that the said Bank of Minden is entitled to participate in and be paid out of the proceeds of the policies of insurance paid the estate of the deceased O. P. Clement, with cost of this opposition.

It is finally ordered that, as herein above amended, the said account be approved and homologated and the funds be distributed in accordance therewith.

Thus done, read and signed in open Court on this the 14th day of March, 1919.

J. N. SANDLIN,
Judge Second District Court,
Parish of Webster.

Endorsed: Filed March 14th, 1919. J. F. McInnis, Dy. Clerk, D. C.

Second District Court, Webster Parish, Louisiana.

No. 68, Probate Docket.

SUCCESSION OF O. P. CLEMENT, Deceased; Opposition of Bank of Minden et al.

Appeal Bond.

Filed March 24th, 1919, by Mrs. Louie Clement, Tutrix.

STATE OF LOUISIANA,
Parish of Webster:

Know all men by these presents that we, Mrs. Louie Clement, Tutrix and L. K. Watkins, as security acknowledge ourselves to be indebted unto J. H. Tillman, Clerk of the 2nd Judicial District Court in and for the aforesaid Parish and State, in the full sum of Two hundred Dollars, for the payment of which sum well and truly to be made, we bind ourselves in solido firmly by these presents.

Dated at Minden, La., this 24th day of Mch., 1919.

The condition of the above obligation is such, that whereas, the above bounden Mrs. Louie Clement, Tutrix has this day taken an appeal from a final judgment rendered against her in the suit entitled above, Succession of O. P. Clement, on 3rd Opposition by her.

No. 68 on the docket of the District Court, Parish of Webster, and State of Louisiana, said judgment signed on the 14 day of Mch. A. D. 1919 and said appeal made returnable to the Honorable Supreme Court of Louisiana, at New Orleans, La., on the 7th day of April, A. D. 1919.

Now, therefore, if the above bounden Mrs. Louie Clement, Tutrix shall prosecute her appeal and shall satisfy whatever judgment may be rendered against her, or that the same shall be satisfied by the proceeds of the sale of her property, real and personal, if she be cast in said appeal, otherwise that said security shall be liable in her

stead, then, and in that case, the above obligation to be null and void, otherwise to be and remain in full force and virtue in law.

MRS. LOUIE CLEMENT,
Tutrix.

By L. K. WATKINS,
Att'y at Law.

L. K. WATKINS,
Surety.

STATE OF LOUISIANA,
Parish of Webster:

L. K. Watkins, Att'y for Mrs. Louie Clement, Tutrix, the principal in the within bond, being duly sworn, according to law, deposes and says that he is informed and believes that L. K. Watkins, surety on the within bond, is worth over and above debts and obligations the amount for which he has herein bound himself, in property that can be subjected to levy under execution.

MRS. LOUIE CLEMENT,
Tutrix.

By L. K. WATKINS,
Att'y at Law.

Sworn to and subscribed before me this the 24th day of Mch. 1919.

J. F. McINNIS,
Dy. Clerk, D. C.

STATE OF LOUISIANA,
Parish of Webster:

L. K. Watkins, surety on the within bond being duly sworn according to law, deposes and says for himself, that all his debts and obligations being paid, he is worth in property that can be subjected to levy under execution, the amount for which he has herein obligated himself.

L. K. WATKINS.

Sworn to and subscribed before me this the 24th day of Mch. 1919.

J. F. McINNIS,
Dy. Clerk, D. C.

Endorsed: Filed Mch. 24th, 1919. J. F. McInnis, Dy. Clerk. D. C.

39 Second District Court, Webster Parish, La.

No. 68, Probate Docket.

SUCCESSION OF O. P. CLEMENT, Deceased, and Opposition of Bank of Minden et al.

Appeal Bond.

Filed March 24th, 1919, by Mrs. Louie Clement, Adm'x.

STATE OF LOUISIANA,
Parish of Webster:

Know all men by these presents, that we, Mrs. Louie Clement, Administratrix and L. K. Watkins, as surety, acknowledge ourselves to be indebted unto J. H. Tillman, Clerk of the Second Judicial District Court in and for the aforesaid Parish and State, in the full sum of Two hundred Dollars, for the payment of which sum, well and truly to be made, we bind ourselves in solido firmly by these presents.

Dated at Minden, La., this the 24th day of March, 1919.

The condition of the above obligation is such, that whereas, the above bounden Mrs. Louie Clement, Administratrix has this day taken appeal from a final judgment rendered against her in the Succession of O. P. Clement, 3rd Opposition of Bank of Minden et al., No. 68 on the Probate Docket of the District Court of the Parish and State aforesaid, said judgment signed on the 14th day of March, A. D. 1919, and said appeal made returnable to the Honorable Supreme Court of Louisiana at New Orleans, La., on the 7th day of April, A. D. 1919.

Now therefore, if the above bounden Mrs. Louie Clement, Admx., shall prosecute the appeal and shall satisfy whatever judgment may be rendered against her, or that the same shall be satisfied by the proceeds of the sale of her property, real and personal, if she be cast in said appeal, otherwise that said surety shall be liable in her stead, then, and in that case, the above obligation to be null and void, otherwise to remain in full force and virtue in law.

MRS. LOUIE CLEMENT, *Admx.*,
By L. K. WATKINS,
Atty at Law.
L. K. WATKINS,
Surety.

40 STATE OF LOUISIANA,
Parish of Webster:

L. K. Watkins, Atty. for Mrs. Louie Clement, Admx., the principal in the within bond, being duly sworn, according to law, deposes and says that he is informed and believes that L. K. Watkins surety on the within bond, is worth over and above debts and obliga-

tions the amount for which he has herein bound himself, in property that can be subjected to levy under execution.

L. K. WATKINS.
Atty for Admx.

Sworn to and subscribed before me this 24th day of Mch., 1919.

J. F. McINNIS.
Dy. Clerk, D. C.

STATE OF LOUISIANA,
Parish of Webster:

L. K. Watkins, surety on the within bond being duly sworn according to law, deposes and says for himself that all his debts and obligations being paid, he is worth, in property that can be subjected to levy under execution, the amount for which he has herein obligated himself.

L. K. WATKINS.

Sworn to and subscribed before me this the 24th day of Mch., 1919.

J. F. McINNIS.
Dy. Clerk, D. C.

Endorsed: Filed March 24th, 1919. J. F. McInnis, Dy. Clerk D. C.

11 District Court, Webster Parish, Louisiana.

No. 68.

SUCCESSION OF O. P. CLEMENT.

Evidence Taken on the Trial of the Above Numbered and Entitled Cause, on trial Before the Honorable John N. Sandlin, Judge of the Second Judicial District Court in and for Webster Parish, Louisiana, on March 6th, 1919.

Evidence reported by R. P. Cook & Co., Stenographers, of Shreveport, Louisiana.

Appearances:

L. K. Watkins, Attorney for Administratrix.
Messrs. Roberts, Robert & Johnson, Attorneys for opponents the Bank of Webster and Robert Roberts, Jr.
J. S. Atkinson, Attorney for opponent, Bank of Minden.

Plaintiff's Evidence.

Counsel for administratrix offered in Evidence the Inventory and supplemental inventory in this case.

Counsel for Administratrix offered in evidence the record in the case of the Bank of Webster, by Executory Process foreclosing the mortgage, for the purpose of eliminating from the contest, the proceeds for the sale of the house, as shown by that execution.

Counsel for Administratrix offered in Evidence the return of the Sheriff.

Counsel for Administratrix offered in Evidence a list of the assets as shown by the tableaux and account filed.

Objected to by Counsel for Opponents, for the reason it is not sworn to, and is self serving declarations of the administratrix, irrelevant and ex parte, and not the best evidence.

By Court: Let it be filed under the objection.

To which ruling of the Court, Counsel for Opponents except and ask that this note stand in lieu of formal bill of exceptions.

Mrs. MARY HARRINGTON, a witness for the Administratrix, being first duly sworn, testified as follows:

On direct examination she said:

By Mr. Watkins:

Q. Mrs. Harrington, you are the sister of Mrs. Clement, are you not?
A. I am.
Q. Well acquainted with the history of the family?
A. Yes sir.
Q. What children were born of the marriage of Mr. Clement and your sister?
A. Lovie, Luther, Estelle, Frank and Sam.
Q. They are all still under age, minors?
A. They are.
Q. Their Grandfather, F. M. Clement, is still living?
A. Yes sir.

No Cross-examination.

42 Mrs. LOUIE CLEMENT, a witness for the Administratrix, being first duly sworn, testified as follows:

On direct examination she said:

By Mr. Watkins:

Q. Mrs. Clement, you are the widow of O. P. Clement?
A. I am.
Q. You are the mother and tutrix of the children just named by your sister?
A. Yes, sir.
Q. I see in the succession here, that you have filed application to the Court to have these children paid Four Thousand Four

Hundred and thirty-three dollars, collected on insurance for their account. Did you approve that claim to them, as Administratrix and seek to have it paid?

A. Yes sir.

Q. As administratrix you approved that claim?

A. Yes sir.

Q. Your yourself, claim nothing of that fund. You do not claim the succession yourself?

A. I do not.

Q. Your husband died in Mississippi?

A. Yes sir.

Q. The death of your husband occurred out there in Mississippi away from a railroad station?

A. Yes sir, twenty-three miles.

Q. Which made the burial expenses and shipment of the remains back to Minden for burial quite expensive?

A. Yes sir.

Q. Do you remember what the expenses amounted to, Mrs. Clement?

A. I cannot. I might give the total of the entire expenses, but I think you have the statement there to that effect.

Q. Do you have any recollection of the burial expenses, that is said to have been lost, the account is said to have been lost?

A. You have reference to the undertaker's bill; I know the expenses for the undertaker was One hundred and fifteen dollars, plus the railroad expenses.

Q. It shows on here that you have credited or approved the claim of Dr. Harrington for One hundred and fifty dollars, was that what he charged for a trip out there and several days' attention to deceased?

A. Yes sir, he was away from his practice about a week.

Q. Sixteen dollars, Dr. Key; you approved that?

A. Yes sir, that was paid.

Q. You have employed an attorney in this case, L. K. Watkins, to wind up this succession, and look after its affairs?

A. Yes sir.

Q. You have approved a lot of claims, but no funds to pay them, allowing the children the Forty-three hundred and thirty-three dollars?

A. Yes sir, that is a fact.

On Cross-examination she said:

By Mr. Atkinson:

Q. Mrs. Clement, you collected the policy of Insurance?

A. Yes sir.

Q. What was that, forty-three hundred and thirty-three dollars or forty-four hundred and thirty-three dollars and thirty-three cents?

A. Yes sir.

Q. How many policies did Mr. Clement have, at the time of his death?

A. I do not know, probably the Judge of the Insurance man can tell you. I do not remember. We have a note of them, but the number of policies I do not remember.

Q. Well, where did you find the insurance policies after his death?

A. I think that they were found in the Sheriff's office. I will not be positive.

Q. Who found them?

A. My best recollection is that they were found in the Sheriff's office and Mr. Phillips found them.

Q. You delivered to your attorney the policies, when you got them, or what did you do with them when you first got the policies?

A. I kept them at home in a package.

Q. Then afterwards you delivered them to your Attorney?

A. Yes sir, I believe they were.

Q. Now, then, how many policies did you have at home in that package?

A. I do not remember how many. In the Penn Mutual and New York life, some had lapsed, no good. I do not know the names of the Companies?

Q. In two companies?

A. Yes sir.

Q. The Penn Mutual and New York Life?

A. Yes sir.

Q. Now how much insurance was payable to you, under policies?

Objected to by Counsel for Administratrix, on the ground and for the reason there is no contention over the items of insurance collected under those private policies that were made payable to the widow, as beneficiary, and it has no relation to the issues here.

By Mr. Atkinson: The purpose was to show, he was protecting both his family and his creditors. I want to show how much was payable to her, because we propose to show afterwards that he was to carry Insurance and did carry insurance to protect his creditors.

Objection overruled by the Court.

To which ruling of the Court, Counsel for Administratrix excepts and asks that this note stand in lieu of formal bill of exceptions.

Q. How many policies were payable to you, personally?

A. I cannot off-hand say; I do not remember.

Q. How much money was collected on policies for you, that were payable to you as beneficiary?

Objected to by Counsel for Administratrix, on the ground and for the reason it is irrelevant to the issues in the trial of this case, and not justified by the allegations, and a private policy issued to the wife and collected by her cannot be inquired into, in this distribution of the funds of the estate.

Objection overruled by the Court.

To which ruling of the Court, Counsel for Administratrix excepts and asks that this note stand in lieu of formal bill of exceptions.

A. I do not understand, if that question is asked me?

Q. How much was collected from policies that were payable to you?

A. I would have to get some notes on that before I could give the amount.

Q. I do not want the exact number of cents, but I will ask you if you can tell me approximately.

A. I do not remember exactly.

Q. Will you tell me approximately how much was collected from policies that were payable to you personally?

A. Well, my best recollection is, if asked approximately, somewhere in the neighborhood of Six Thousand dollars.

Q. Now let me refresh your memory; was it not approximately Eight Thousand dollars?

A. I do not think, you are right, but the policies will probably show for sure; of course there were some of them nonsubjectable.

44 Q. How many policies did Mr. Clement leave in force, where the proceeds were payable to his estate, or his Administrator?

A. I am not prepared to answer on that point.

Q. You know however that the proceeds collected on those policies, that were payable to the estate was Forty Four hundred and Thirty three dollars?

A. That is what I was trying to get at, that is what I was trying to keep up with, and not the number of the policies.

Q. Don't you know what date he took those policies out?

A. I do not.

Q. Do you know *what* they *they* were issued to him?

A. I do not.

Q. Do you know what Companies they were in?

A. Yes sir, the Penn Mutual and the New York Life.

Q. Do you know what year they were taken out in?

A. I do not.

Q. Did you ever read those policies?

A. Not until they were payable, and we were looking to see how much was payable and collectible.

Q. Now did you read the policies, or just read one or two lines?

A. Well I think that I qualified myself to be acquainted with the facts in these policies; I think that I read them over, I suppose all of them.

Q. Did you read those policies payable to his estate, that are referred to in your tableau?

A. I do not remember just whether I read every word, because I had an attorney, and I do not remember reading all of those things over.

Q. We ask that you consult your attorney and get that data and give it to us, giving the dates of the policies and amounts.

Objected to by Counsel for Administratrix on the ground and for the reason that the policies are listed in the inventory.

Q. Mrs. Clement, the inventory refers to a policy in the Penn Mutual Insurance Company No. 586,676 for Two thousand dollars and one also in the same Company, No. 641,533, for Three Thousand dollars, and one in the Louisiana Life Insurance Company for Two thousand dollars, being No. 3055. Now I will ask you, why it was same money was not collected?

A. I do not understand why they were listed there; there was no collections on some of those?

Q. Then here is the New York Life policy No. 41,020,661 for Fifteen Hundred dollars, marked no value, and then there is another one here in the New York Life No. 3,683,557, marked no value, extended under investigation. Do you know what investigations were made as to those policies?

A. My attorney made the investigation, and I supposed that they were to be listed until they were to be collected.

Q. Will you show me on the inventory the policies that you collected?

A. I could not, if my life depended upon it.

Q. Who can tell?

A. You have Mr. McMahon here, may be he can tell.

Q. But Mr. McMahon is not the administrator of the Succession, and I am asking you as administratrix, if anything was collected on the policies listed in the inventory?

A. I have not any idea about the numbers of the policies, and I do not remember which policies there was that was paid.

Q. Are you in a position to say whether or not anything has been collected on any of these policies in that inventory?

A. It seems that two of the Penn Mutual have been paid.

Q. Now the two Penn Mutual policies aggregate Five thousand dollars?

A. I do not know which ones of the Penn Mutual have been paid; I do not remember the numbers. I know that every cent collected has been put in the bank.

Q. But can you explain the difference in the amounts?

A. No, sir. I had an attorney to look after that. I had no idea those questions would arise.

45 Q. Who was the attorney that looked after it, Mr. Watkins?

A. Yes sir.

Q. Well, can you tell me the dates of the policies that you collected and the proceeds of which you are now claiming for your children?

A. I cannot.

Q. Will you ask your attorney, Mr. Watkins, if he will give you the dates of those policies?

A. If he has them in his possession, I might look for it.

Objected to by Counsel for Administratrix, on the ground and for the reason that we do not think that line of interrogations here in Court is proper, as there is no contest except as to the amount col-

lected Forty four hundred and thirty three dollars and thirty three cents, and that is the fund that they are claiming for distribution according to the allegations in this suit.

Objection overruled by the Court.

To which ruling of the Court, Counsel for Administratrix except and asks that this note stand in lieu of formal bill of exceptions.

Q. I will ask you, if any of these policies that you have listed in this inventory were collected?

A. There were two Penn Mutual policies, and I suppose that Mr. McMahon has the dates and numbers.

Q. Now then, I will ask you this question, were they collected?

A. I have collected and deposited in the Bank of Minden every dollar that was owing to the estate, that it was possible to collect. I have never checked for my personal use any of it. There has been some indebtedness for the estate that checks have been drawn through the bank. I know nothing of the other policies listed.

Q. You collected two Penn Mutual policies and deposited the funds in the Bank of Minden?

A. Yes sir.

Q. Is that a part of the fund referred to in your account?

A. Yes.

Q. Are the proceeds that were placed in the Bank of Minden part of the insurance funds referred to in your account?

A. It is.

Q. Now then where are the proceeds collected from the New York Life?

A. I do not think there was one in the New York Life payable to the estate, that was in force.

Q. Have you not already testified that the proceeds consisted of funds collected from the New York Life and Penn Mutual policies?

A. No, sir. You asked how many were made payable to the estate and I answered that I did not know how many, but I do not say that they were collectable.

Q. Mrs. Clement, I am not trying to confuse you, but what I want to know and what I am trying to get at is the dates and amounts collected?

A. I have not those things in my mind, but had I known these questions would be asked I might have, or I would have qualified to have answered these questions?

Q. How long would it take you to find out?

A. If I can get the information from Mr. McMahon, or Judge Watkins I will be glad to give you the information at once, if it is in line.

Q. I want to ask you these two questions, and give you time to find out? How much insurance money was collected, payable to the estate, or the Administrator of the estate of O. P. Clement, and when were the policies issued, under which you collected those proceeds?

A. It is impossible for me to answer that.

Q. Please find that out and take the stand again and give us that information.

46 On redirect examination she said:

By Mr. Watkins:

Q. Mrs. Clement, he has asked you to give facts about the policies and dates, numbers and amounts, and information that you have not in your possession—you have no data in your possession to testify as to that?

A. No, sir, I have not.

Q. The policies were all in your possession after your husband's death?

A. Yes sir.

Q. You did not have to apply to the Bank to get them?

A. No, sir.

Q. Or either bank, they were in your possession, you had them?

A. Judge, you know I do not remember, I was in distress.

Q. You remember the fact that your attorney L. K. Watkins and you had these policies, at your house, and went over them shortly after his death?

A. Yes sir, I remember that.

Q. You remember then, that you did have possession of the policies?

A. Yes sir.

On recross-examination she said:

By Mr. Atkinson:

Q. Mrs. Clement, are you able now to answer those questions that I propounded to you, just before you left the stand?

A. I am not, as to the dates and numbers of the policies?

Q. I do not care about the numbers, I want to know the dates?

A. It is impossible for me to give the dates.

D. W. STEWART, a witness for the Administratrix, being first duly sworn, testified as follows:

On direct examination he said:

By Mr. Watkins:

Q. Mr. Stewart, you are a practicing attorney here?

A. I am.

Q. You are the attorney that issued the executory process and foreclosed the mortgage against the Clement home, after his death?

A. I am, I represented the Bank of Webster.

Q. You are pretty familiar then with the run of the litigation of the case, and the different steps that had to be taken?

A. Yes sir, I have watched the proceedings in the succession, being interested to that extent and consider that I know something about what was done in the succession.

Q. Now considering the executory process and the handling of the succession and the different sales that were made and the litigation over this account, involving the distribution of the funds that is the collection and distribution of the insurance money, to state whether you consider Five hundred dollars, in the case appealable to the Supreme Court, an excessive, or a reasonable fee?

A. I would think that that would be a reasonable fee, not excessive.

Court thereupon took recess until 1:30 P. M.

1:30 P. M. Court met and trial of above cause was resumed.

Mrs. LOUISE CLEMENT, a witness for the Administratrix, here, recalled testified as follows:

On direct examination she said:

By Mr. Watkins:

47 Q. Mrs. Clement, have you obtained a memoranda of the policies that you were questioned about this morning?

A. Yes sir, I have. May 4th, 1914, on policy 641,523 Penn Mutual paid Two thousand nine hundred and sixty one dollars and thirty three cents, there being some deduction from the policy in the settlement. February 5th, 1909, New York Life policy 1,120,951, lapsed January 28th, 1918, but settlement allowed for the sum of Fourteen hundred and seventy-two dollars. The other Penn Mutual policy had to be relinquished before the above policy was paid. Some policies were not inventoried as they were worthless and some estate were corrected later.

On cross-examination she said:

By Mr. Atkinson:

Q. Mrs. Clement, what was the date of the Penn Mutual policy that you collected?

A. May 4th, 1914.

Q. That was payable to the estate?

A. Yes sir, it was.

Q. Now what was the date of the New York policy, the proceeds of which you collected?

A. February 5th, 1909.

Q. February 5th, 1909?

A. Yes sir.

Q. That was also payable to the estate of deceased at his death?

A. It was.

Q. Now this Three thousand dollar policy in the Penn Mutual took the place of a policy that the deceased had in the Penn Mutual that had lapsed, for two thousand dollars?

Counsel for Administratrix objects to parole evidence to prove that, as she has no data to refresh her memory.

Objection sustained by the Court.

To which ruling of the Court, Counsel for Opponents except and ask that this note stand in lieu of formal bill of exceptions.

Q. Mrs. Clement, did not Mr. Clement take out a policy of insurance in the Penn Mutual, made payable to his estate at his death, during the year 1912?

A. I do not know.

Q. Did he not have a policy that lapsed in 1913?

Objected to by Counsel for Administratrix on the ground and for the reason that the policy would be the best evidence, and she could not be expected to testify, and give proof by parole.

Objection sustained by the Court.

To which ruling of the Court, Counsel for Opponents except and ask that this note stand in lieu of formal bill of exceptions.

Q. Just examine this policy No. 586,677, for the purpose of refreshing your memory, and state if it is not a fact that he had a policy that lapsed in 1913?

(Showing witness document.)

Objected to by Counsel for Administratrix, on the ground and for the reason that the document will show for itself.

Objection sustained by the Court.

To which ruling of the Court, Counsel for Opponents except and ask that this note stand in lieu of formal bill of exceptions.

Q. Now Mrs. Clement, are you personally able to testify as to the correctness of the items on this account, of your own personal knowledge?

A. Not without reference to the notes, because I did not trust to my memory.

Q. With reference to what?

A. Reference to the itemized statement. I cannot off-hand give it.

Plaintiffs rest.

A. J. McMAHON, a witness for Opponents, being first duly sworn, testified as follows:

On direct examination he said:

By Mr. Atkinson:

Q. Mr. McMahon, you live in Shreveport?

A. Yes sir.

Q. You are agent for the Penn Mutual Life Insurance Company of Philadelphia?

A. Yes sir.

Q. Did you solicit and write the policies on the life of Mr. O. P. Clement, deceased?

Q. Yes sir.

Q. How were those policies made payable, that you wrote?

(Objected to by Counsel for Administratrix, as to any parol proof as to the policies, as irrelevant to the issues in this case.

Objection sustained by the Court.

To which ruling of the Court, Counsel for Opposition except and ask that this note stand in lieu of formal bill of exceptions.

Q. What was the date of the first policy that you wrote?

A. I wrote Mr. Clement in May, 1912, two policies, one for two thousand dollars and one for three thousand dollars, and he paid the premium for one year and the policy lapsed May 13th. In May, 1914 I got an application from him for an entirely new policy, and at that time he gave me the three thousand dollar policy, to cut the application off of, and he still kept the two thousand dollar policy. He kept the two thousand dollar policy and it was in his effects after his death, but it was useless, as it had lapsed for several years. He took a new policy in May, 1914.

Q. What?

A. Application was made May 13th, or April 14th and on the 9th of May, 1914, a policy was issued for three thousand dollars.

Q. That was the policy that was in force at the time of his death.

A. Yes sir, and was paid.

Q. That is the one that Mrs. Clement testified about?

A. Yes sir.

Q. Do you know where that policy is that the Company paid?

A. It is with the Company in Philadelphia, surrendered for the check.

Q. You delivered the check?

A. Yes sir, I delivered the check, I think that I delivered it personally.

Q. The check was payable to Mrs. Clement as Administratrix?

A. Yes sir, as Administratrix.

Q. Now examine this policy in the Penn Mutual, No. 786,677, dated June 19th, 1912, and state whether or not that is the Two thousand dollar policy.

A. That date may be wrong, the policy was written June 12th, but the premium was date back to 24th of May in order to give under age. The policy was really issued on May 24th, 1912.

Q. Now that is the policy for three thousand dollars that lapsed in 1913?

A. Yes sir.

Q. Then in 1914, you had an application to write Two thousand dollars?

A. Yes sir.

Q. Which you did?

A. Yes sir.

Q. Now was that policy written in 1914, which you say has been

connected to the Company, or did it contain the conditions the same as this policy that was made in 1912?

Objected to by Counsel for Administratrix, as the policy shows for itself, and we object to any parole explanation in regard to the policy, and it is irrelevant to the issues in this case.

Objection overruled by the Court, and the evidence received subject to the objection.

To which ruling of the Court, Counsel for Administratrix excepts and asks that this note stand in lieu of formal bill of exception.

A. Yes sir, it was the same.

Q. In other words, the policy written in 1914, the proceeds of which was collected, was a policy made payable to the executors administrators or assigns of the deceased, at his death?

A. Yes sir.

Policy referred to marked Opposition No. 1, for identification.

Q. Mr. McMahon, how much did the Company pay the Administratrix under that policy, that was issued in 1914?

A. I cannot say that. The policy was for Three thousand dollars and some deductions.

Q. He applied for that policy on what date?

A. Application of date April 13th, 1914.

Q. Delivered to him, when?

A. The policy was issued May 9th, 1914, and delivered probably a week afterwards, in the course of mail.

On cross-examination he said:

By Mr. Watkins:

Q. You say that you do not remember the precise amount of the check that you delivered?

A. No, sir, I do not remember that.

Q. Did you receive a letter from the Company in regard to that?

A. Why perhaps we did.

Q. Refresh your memory and see if there were not some deductions?

A. Yes sir, there were some deductions.

J. S. Bacon, a witness for Opponents being first duly sworn, testified as follows:

On direct examination he said:

By Mr. Atkinson:

Q. Mr. Bacon, you live here in Minden?

A. No sir.

Q. Where do you live?

A. Near Heflin.

Q. You are Agent of the New York Life Insurance Company?
A. Not at the present time.
Q. Were you during the year 1914?
A. Yes sir.

Q. What policies, if any did you write on the life of Mr.
50 O. P. Clement, made payable to his estate at his death, in 1914? State what such policies you wrote prior to that time?
A. I wrote three different ones. (Witness examines memoranda.)
Q. Well, what such policy did you write prior to that time, that was in force at the time of his death?
A. Wrote policy 3,581,449, application 5,954, policies issued 6-2-14 amounting to Twenty five hundred dollars, New York Life; Next policy 3,811,429, application 10,906 for two thousand dollars.

Counsel for Administratrix objects to any evidence except as to the policy in force.
Objection sustained by the Court.
To which ruling of the Court, Counsel for Opponents except and ask that this note stand in lieu of formal bill of exceptions.

Q. Just tell me, what time, prior to 1914 you wrote a policy payable to Mr. Clement- estate, at his death?
A. Policy 412,661, application 1-28-09, delivered 2-18-09.
Q. How much was the amount of that policy?
A. Fifteen hundred dollars, but the amount paid was Fourteen Hundred and Seventy-two dollars.
Q. Now as I understand you got the application for that policy on January 28th, 1914?
A. 1909.
Q. And that the policy was written and delivered to Mr Clement by the Company, of February 18th, 1909?
A. Yes sir, that is the date that I delivered it to him.
Q. Made payable to his estate, at his death, in the sum of Fifteen Hundred dollars?
A. That is correct.
Q. How much was actually paid the Administratrix of his Succession under that policy?
A. Fourteen Hundred and seventy-two dollars.

On cross-examination he said:

By Mr. Watkins:

Q. That was all that the Company would pay? There were some deductions?
A. Bound to be some deductions when they paid fourteen hundred and seventy-two dollars on a fifteen hundred dollar policy.
Q. Mrs. Clement did not discount it?
A. No, sir, the reason why, that was the amount that was due on the policy at that time.

On redirect examination he said:

By Mr. Atkinson:

Q. Why was not the face of the policy paid? *Why was not the face of the policy paid?* What was the deduction for?
A. That was deducted, according to my recollection, in a settlement, and there was a lien on the policy, money he borrowed on it and it seems to me that was taken into account when it was settled. A settlement I know was made on the policy: I noticed it when I *taken* it up.

On recross-examination he said:

By Mr. Watkins:

Q. So they collected the amount due on the policy?
A. Yes sir.

J. W. McDONALD, a witness for the Opponents being first duly sworn, testified as follows:

On direct examination he said:

51 By Mr. Roberts:

Q. Mr. McDonald, where do you live?
A. Minden.
Q. What is your connection with the bank of Webster?
A. Cashier.
Q. How long have you been connected with the bank?
A. A little over seventeen years.
Q. You were cashier of that Bank during the year 1913?
A. Yes sir.
Q. Mr. McDonald, will you refresh your memory by the note register and state what loans were made to Mr. O. P. Clement during the year 1913?

Counsel for Administratrix objects to any evidence of any indebtedness shown by the memorandas and records of the Bank kept by the Cashier and bookkeeper as being in their own favor, and does not prove themselves and is exparte statements, and for the specif- reason that the notes that are claimed as due in this case are the best evidence of indebtedness and shows the dates amounts and signatures of the deceased and cannot be enlarged, varied or altered by any records kept by the third opponent's Bank and we object to any and all evidence to prove, directly or indirectly, by parole or by records a pledge of Insurance policy to secure this obligation or indebtedness. That the only legal proof of pledge is by the delivery and agreement of the parties of the thing pledged, and we object to any evidence seeking to prove by inference or by circumstances.

Object further to any declarations of the deceased being proven by parole, either to take the claim out of prescription or to renew it in any sense.

Objection overruled by the Court.

To which ruling of the Court, Counsel for Administratrix excepts and asks that this note stand in lieu of formal bill of exceptions.

A. February 3rd, 1913, Mr. Clement and Robert Roberts, Jr., signed a note due the Webster Bank for six hundred dollars.
Q. Has that note ever been paid?
A. No sir, it has been renewed, but never paid.
Q. Renewed but never paid?
A. Yes sir.
Q. Except the interest?
A. Except the interest.
Q. Who paid the interest?
A. Mr. Clement.
Q. Who got the money, the six hundred dollars?
A. Mr. O. P. Clement.
Q. He negotiated the note?
A. Yes sir.
Q. Will you state what negotiations took place, leading up to the giving of this note?

Counsel for Administratrix objects to any parole testimony in regard to the transaction of the note, as the note is the best evidence, and we object to any declarations of the deceased party and we object to any parole testimony of circumstances or inferences to try to show a pledge of the policy of insurance and the proceeds of same under contest in this case.

We object generally to any and all parole contracts verbal or implied between the deceased party and the Bank and its officers or other parties.

Objection overruled and the evidence admitted subject to the objection.

To which ruling of the Court, Counsel for Administratrix——

52 The above objection and objections and ruling heretofore made as made general to apply to all third opponents in this case.

A. There were not any special negotiations except he asked me to renew the note, and he stated to me several times. I do not know just at that time, he stated several times his creditors would be better off if he was dead, because he had insurance in their favor.

Counsel for Administratrix objects to their trying to vary the form of insurance that he took out, as the policies show for themselves.

Objection overruled by the Court.

To which ruling of the Court, Counsel for Administratrix excepts and asks that this note stand in lieu of formal bill of exceptions.

Counsel for Executrix asks that same be made general and it is so ordered by the Court.

Q. Notwithstanding, you required further security?
A. Yes sir.
Q. The Bank of Webster still holds the note against O. P. Clement for six hundred dollars?
A. Yes, sir, signed by O. P. Clement and Robert Roberts, Jr.?
Q. Now that note has been renewed during all that time?
A. Yes sir.
Q. Have you that note with you Mr. McDonald?
A. Yes sir. (Witness produces note.)

Counsel for Opponent offers the note referred to in evidence, with leave to substitute a certified copy thereof.

To be filed in evidence and marked exhibit No. 2.

Q. I believe that you stated that no part has ever been paid except the interest?
A. No, sir, only the interest.
Q. Only the interest from year to year.
A. Yes sir.
Q. Now Robert Roberts, Jr., was endeavoring to get released from that at each renewal period?
A. I knew that Mr. Clement had trouble renewing the notes. I never heard of anyone having trouble with him.
Q. You are prepared to testify that Robert Roberts, Jr., never had any way of getting free of that debt, except by paying it, since the note was first made?
A. No, sir, not that I know of, no way that I know of.
Q. Now this note evidences the same loan made in 1913?

Counsel for Administratrix objects to any parole proof to the effect asked for.

Objection sustained by the Court.

To which ruling of the Court, Counsel for Opponents except and ask that this note stand in lieu of formal bill of exceptions.
No cross-examination.

Robert Roberts, Jr., a witness for opponents being first duly sworn testified as follows:

On direct examination he said:

By Mr. Atkinson:

Q. Mr. Roberts, you are—you have heard the testimony in this case; you are the Robert Roberts, Jr., whose signature appears on this note?

A. Yes sir.

Q. The note offered in evidence and marked Opponent's Exhibit No. 2?

A. I am, yes sir.

Q. You are also one of the defendants in this case?

A. Yes sir.

Q. Represent the Bank of Webster and yourself?

A. Yes sir.

Q. You heard the testimony of Mr. McDonald, regarding the loan that was made Mr. O. P. Clements, deceased, in 1913, I believe?

A. Yes sir.

Counsel for Administratrix makes the same objection to the testimony of this witness as to the testimony of Mr. McDonald, same ruling of Court and bill of exceptions reserved.

Q. Was that loan ever paid?

A. No, sir, never has been paid, as far as I know, and from time to time, after I signed the obligation with Mr. Clement in 1913 he would call on me to renew it with him——

Counsel for Administratrix objects to the conversation between this party and Mr. Clements who is deceased.

A. (Continued:) I really demurred to signing the note the first time in 1913, and finally did so on the assurance of Mr. Clement that he had protection for his creditors in the event of his death, with insurance payable to his estate.

Q. From whom did you obtain that assurance, as to the insurance?

A. I obtained it from the deceased, and at various times the note was being renewed I endeavored to get Mr. Clement to find other security, but he was unable to do so and I never have been able to get my name off the note, unless I would pay it, which I hope to be able to escape having to do. I received no benefit.

Q. I will ask you whether or not the various renewals finally went up to the renewal note offered in evidence?

A. The various renewals did result in the note now offered in evidence, and the note is now for the same amount that it originally was, except the interest payments made from time to time by Mr. Clement.

Q. This last note made in 1917, was made for the old one given in 1913, same debt?

A. That is for the old debt contracted in 1913, February.

On cross-examination she said:

By Mr. Watkins:

Q. Were you borrowing money for Mr. Clement's accommodation or your own accommodation, which one got the money?

A. Mr. Clement got the money. I never saw it. I did not go to the Bank. Mr. Clement borrowed the money and brought the note in to me to get me to sign it, and I signed it for his accommodation.

Q. Now was there not some other notes that you all *swapped* in which you got the money?

A. No, sir, that is the only note I ever signed for Mr. Clement for that debt.

Q. Now on other occasions, did you all not swap paper, and you got the money?

A. No, sir, I do not recall Mr. Clement ever accommodating me that way. I do not recall ever having asked Mr. Clement to sign a note for me. I think that he would have done it, if I had asked him he was very friendly to me, but I remember telling Mr. Clement when he first asked me, that my own name was about all I could pay, that was the reason I demurred at signing, and I knew that he had about all that he could care for, and he assured me it was protected by insurance and he had an eventual interest in his Father's Estate that he looked forward to of course.

54 Q. You never saw the policy that he referred to?

A. No, sir, I never called on him for it, did not ask a special pledge of it. I did not do that.

R. H. MILLER, a witness for the Opposition being first duly sworn testified as follows:

On direct examination he said:

By Mr. Atkinson:

Q. Mr. Miller, how long have you resided in Minden?
A. Twenty-nine years.
Q. How long have you been connected with the Bank of Minden?
A. Twenty-nine years.
Q. In what capacity?
A. Cashier.
Q. You are still cashier?
A. Yes, sir.
Q. You were well acquainted with O. P. Clement?
A. I was.
Q. Examine these notes dated April 15th, 1916, March 22nd, 1916, and November 20th, 1916, and state whose signature that is on them?

(Witness examines notes referred to.)

A. That is Mr. Clement- signature.
Q. Who is the holder and owner of those notes?
A. The Bank of Minden.
Q. Will you please state what negotiations or dealings the Bank of Minden had with Mr. Clement that resulted in it owning and holding these notes, that you say that Mr. Clement signed?

Counsel for Administratrix renews all the objections made heretofore, to these line- of interrogatories, and to all evidence to prove the renewal of debts, to prove pledged of policies or proceeds thereof, and to prove the declarations and promises of deceased party by parole, for the reasons already assigned, and same ruling of Court,

and bill of exceptions reserved, and at request of Counsel same is made general to apply to all evidence of like character.

A. As near as I recollect in the early part of 1914, there was a note on which Mr. Clement was endorser, for an oil Company, Lucky Four Oil Company, around Benton.

Objected to by Counsel for Administratrix, to the contents of previous notes, as irrelevant to the issues in this case and cannot be proven by parole, as the notes themselves are the best evidence.

Objection overruled by the Court.

To which ruling of the Court, Counsel for Administratrix excepts and asks that this note stand in lieu of formal bill of exceptions.

A. On February 9th, 1914, the Bank of Minden loaned Mr. Clement Six Hundred and nineteen dollars and forty cents; February 12th we loaned Mr. Clement a Thousand and eighty dollars; April 14th we loaned Mr. Clement Four hundred and five dollars, making a total of Twenty one hundred and four dollars and forty cents. These loans were renewed from time to time, and gradually reduced until you see by the endorsements, that the interest was kept up by Mr. Clement. I knew that Mr. Clement had life insurance, because I would make remittances for him and Mr. Clement assured me, at the time this loan was made, he did have sufficient life Insurance to cover his debts.

Q. Then, as I understand your testimony, these notes here evidence a loan made Mr. Clement in February and April, 1914?

A. Yes sir.

Q. At that time he executed the three notes?

A. Yes sir.

55 Q. And they were renewed from time to time, and it wound up with these three notes that have been offered in evidence, which are the last renewal notes?

A. Yes sir.

On cross-examination he said:

By Mr. Watkins:

Q. You do not claim to have had these policies in your possession at the time of his death?

A. No, sir, did not ask for the-, for the reason——

Q. You did not have them?

A. No, sir, I did not have them.

On redirect examination he said:

By Mr. Atkinson:

Q. What was the reason that you did not have them?

A. Because they were supposed to be for the benefit of all of the creditors, and he could not pledge them to me, without affecting the other creditors.

Now in connection with his testimony, Counsel for the Bank of

Minden offers in Evidence the three notes sined by O. P. Clement, and ask leave to substitute certified copies thereof.

To be filed in evidence and marked exhibits Nos. 3, 4, 5.

Counsel for Opponents offer in evidence the Penn Mutual policy No. 585677, for the purpose of showing the conditions of the Penn Mutual policy that was paid.

Objected to by Counsel for Administratrix, on the ground and for the reason that it is irrelevant, further than to show the possible form of the policy that was collected?

By Mr. Atkinson: That is as much as I want to show.

Objection overruled by the Court.

To which ruling of the Court, Counsel for Administratrix excepts and asks that this note stand in lieu of formal bill of exceptions.

To be filed in evidence and marked exhibit No. 6.

R. H. Miller, a witness for Opponents, being recalled, testified as follows:

On direct examination he said:

By Mr. Atkinson:

Q. Mr. Miller, I notice here this morning, when the pleadings were read, something about asking permission of the Court to remove the funds of this succession, which I understand were deposited in the Bank of Minden?

A. Yes sir.

Q. What was the agreement when those funds were deposited there, under what condition, was the bond given?

A. The Bond was given by me as Agent of the United States Fidelity and Guaranty Company, with the express agreement and consent of Mrs. Clement, as Administratrix, that the funds would be kept in the Bank of Minden, and that no funds should be withdrawn from the Bank of Minden, without the consent of the Agent of the United States Fidelity and Guaranty Company.

Q. You are that Agent?

56 A. Yes sir and that agreement is part of the contract?

Q. That was in making her bond as Administratrix?

A. Yes sir.

Q. Does the Agent agree to her removing them?

A. No, sir.

On cross-examination he said:

By Mr. Watkins:

Q. Then this item of forty two dollars charged on the account was premium paid for the bond?

A. Yes, sir, renewal premium, the bond has been in effect, this is the second year.

Q. She made personal application to transfer the funds to another Bank?

A. No, sir, drew a draft on the bank for the amount, for an amount larger than was in the bank, that I had to countersign, and I had no intention of letting the money go?

Q. You have not paid any interest on the deposit?

A. No, sir, in the contract between Mrs. Clement and the United States Fidelity and Guaranty Company there is no agreement made as to interest.

Q. But she insisted on interest being paid recently, after getting into litigation with your Bank and finding out that the succession funds were going to be tied up by litigation, then she demanded interest through her Attorney, and we could not arrive at any agreement on it?

A. Yes sir, I agreed to pay the amount paid anyone else, four per cent.

Q. You would not agree to pay the rate paid in Shreveport, Five per cent?

A. I do not know what they pay in Shreveport.

Q. That was the question of putting the funds at interest?

A. You stated the rate paid in Shreveport, they pay four per cent the same as we do here.

Q. That was the only question between you, was putting the funds at interest?

A. I will state we would be very glad, if the fund could be withdrawn and put in another bank, provided Mrs. Clement will make a new bond.

Q. What is the last rate of interest paid, if left there?

A. Four per cent, don't pay anyone any more.

On redirect examination he said:

By Mr. Atkinson:

Q. The Bank of Minden will pay four per cent interest, notwithstanding the fact that the bank is under no obligation to pay interest on these funds? It is willing to pay four per cent interest?

A. Yes sir, where left a specified time, that is a quarter, if left a quarter it draws one per cent, two quarters draws two per cent, that is the rate in Shreveport.

Q. Whereas, under the agreement with the Administratrix the Bank of Minden has a right to hold these funds without the payment of interest?

A. Yes sir, without payment of any.

On cross-examination he said:

By Mr. Watkins:

Q. You remember January 4th, 1919, when this rule to change the deposit and make a new bond was filed, you remember whether the check you spoke of was drawn after that date?

A. I do not remember the exact date, but I am inclined to think that it was.

Q. It was drawn in error, or by mistake by Mrs. Clement, not knowing the legal attitude of the case?

A. I could not tell you.

Q. It came out of Shreveport?

57 A. Yes, sir, came from the Commercial National Bank of Shreveport.

Q. You do not know whether she knew the rule of Court asking for the transfer, or not?

A. I do not know.

Q. You think that it was after that date?

A. I think so. It was after you asked that interest be paid on this deposit, as her attorney.

On redirect examination he said:

By Mr. Atkinson:

Q. Mrs. Clement has had an attorney all the time, from the inception of this administration?

A. Yes, sir.

Q. From the beginning of it?

A. Yes, sir.

On cross-examination he said:

By Mr. Watkins:

Q. Mrs. Clement has been living in Shreveport?

A. Yes, sir.

Opposition rests.

Mrs. LOUIE CLEMENT, a witness for the Administratrix, being recalled testified as follows:

On direct examination she said:

By Mr. Watkins:

Q. Something has been said about the Bank of Minden, and your effort to withdraw the funds, now is it true that you drew a check to transfer the funds to the Commercial National Bank of Shreveport now Mrs. Clement just explain how that was done, and what was done? The money had been on deposit here in Minden?

A. Yes, sir, without drawing any interest, and when I asked for interest there was certain provisos made, the length of time it was to stay in the Bank, and I drew a check with the intention of having the case brought to trial at as early a date as possible, and as the Bank's statement came to me I did not draw a check for more than the bank's statement showed was on deposit at that time.

Q. You did not confer with your attorney?

A. I had not asked my Attorney anything about it.

Q. You did not know this rule was pending at that time?

A. I did not.

Q. You simply consulted other parties?

A. Yes, sir, a banker friend of mine, said that there was no reason why it should not draw interest.

Q. Then it was simply a question of getting interest?
A. Yes, sir, and keeping the case from being postponed from time to time, without, it drawing interest.
Q. Your husband's health failed sometime before he died?
A. Yes, sir. His statement made prior to his ill health, was that there was one or two policies in favor of his estate.
Q. Now on account of his ill health and financial condition a good many of the policies had to lapse?
A. Yes, sir.
Q. He had to withdraw from the race for Sheriff on account of his health?
A. Yes, sir, sure did.

On cross-examination she said:

By Mr. Atkinson:

58 Q. How long had he been in failing financial condition, Mrs. Clement?
A. Make your question more definite?
Q. How long had he been in failing financial condition prior to his death?
A. I do not know that I can make a statement clear, but it was four or five years.
Q. Four or five years?
A. Yes sir, and probably longer.
Q. When was it that he had to withdraw from the race for Sheriff?
A. I do not know.
Q. About what year was it?
A. I do not know that?
Q. About how many years ago?
A. Must have been about, I do not know.
Q. Six or seven years ago?
A. No, sir.
Q. What election was it that he had to withdraw from the race?
A. It was next to the last election for Sheriff.
Q. What time was it, in 1915?
A. Yes sir.
Q. In the primary run in 1915?
A. I do not remember.
Q. It was the last election, was it not?
A. Yes sir, last election.
Q. Before this last Parish election was the one that he had to withdraw from?
A. Yes sir. I do not know what year it was, some of the officials can tell better than I can.
Q. How long prior to that race had he been in this failing financial condition, about—I do not mean exactly?
A. I am not in a position to say, that was recently before his death that I realized his financial condition.
Q. How do you know that it extended back several years?
A. I have reasons to believe it did.

Q. You do business with the Commercial National Bank of Shreveport?

A. To some extent.

Q. That is the one that you do business with over there?

A. Yes sir.

Q. It is a banker friend there that advised you to put the money over there?

A. They thought the bank would allow interest on the money.

Q. Well, why is it you did not want to allow it left with the Bank of Minden?

A. It has been there on deposit, a year and a half and has not drawn any interest on it at all.

Q. Was not agreed that it should?

A. It was not put in with the understanding that it would be tied up with litigation.

Q. If the Bank of Minden is willing to pay four per cent interest on this money, you have no objection to leaving it there?

A. No, sir, not a bit, if that is not all the conditions.

Q. The Bank of Minden announces now it will pay four per cent interest from October, so long as it stays there?

A. It has been in the Bank since November last a year ago.

Q. The Bank of Minden will pay four per cent interest on this money from October, and I do not know of any other bank that will pay interest that far back.

Evidence closed.

We hereby certify that the above and foregoing is a true and correct translation of our Stenographic notes taken on the trial of the above numbered and entitled cause.

E. B. COOK & CO.

By E. B. COOK,

Stenographer.

No. 20

59 Second District Court, Webster Parish, Louisiana.

No. 2087.

BANK OF WEBSTER

vs.

ESTATE OF O. P. CLEMENT.

Executory Process.

Chronological Index.

November 11, 1917.—Plaintiff's petition filed.

Second District Court, Webster Parish, Louisiana.

No. 2087.

BANK OF WEBSTER

vs.

ESTATE OF O. P. CLEMENT.

Executory Process.

Plaintiff's Petition.

Filed November 11th, 1917, by Plaintiff.

To the Honorable J. N. Sandlin, Judge of the Second District Court, holding sessions in and for Webster Parish, Louisiana:

The petition of the Bank of Webster, a banking corporation chartered under the laws of the State of Louisiana, and domiciled in Webster Parish, Louisiana, Whereof Abner P. Turner, First Vice President, is acting President, and John W. McDonald is Cashier, with respect shows:

1st.

That petitioner is the owner and holder, for a valuable consideration before maturity, of a certain promissory note made and subscribed by O. P. Clement, who, at the time of executing said note resided in Webster Parish, which note is payable to the order of petitioner, dated October 9th, 1916 for the sum of Twenty-three hundred and eighty-seven and 20 100 ($2387.20) Dollars, due and payable on October 9th, 1917, with eight per cent interest from the date of maturity, which note is herein attached and made a part of this petition.

2nd.

Petitioner shows that said note is now past due and unpaid, and that in order to secure the prompt payment of said note, with interest, and ten per cent attorneys' fees as stipulated therein, the said O. P. Clement specially mortgaged and hypothecated in favor of the holder of said note by an act before Edmond L. Stewart, a Notary Public in and for Webster Parish, duly commissioned on and acting on the 9th day of October 1916, the following described property in Webster Parish, to wit:

"A tract of land commencing at the intersection of Pearl and McIntyre streets, as shown by the map of the Miller & Watkins Addition to the town of Minden made by J. M. Davies, Parish Surveyor, run 90 degrees East along Pearl Street 240 feet to second corner; thence North 72 degrees East 107 feet to third corner; thence South 20 degrees East 285 feet to fourth corner; thence North 70 degrees East 111 feet to fifth corner; thence North 18 degrees West 207.5 feet to sixth corner; thence North 87 degrees West 321 feet to seventh corner, and thence to initial point, South 1 degree East along McIntyre Street a distance of 212 feet to the point of beginning, said tract of land containing four acres, a certified copy of which act is hereto attached and made a part hereof.

3rd.

Petitioner further shows that said note was duly paraphed "Ne Varietur" by said Notary to identify it with said act of Mortgage; that the debtor by said act confessed judgment upon said note, and consented that if the same were not paid in accordance with its terms and stipulations that said property might be seized and sold by executory process for cash, without benefit of appraisement, for the payment of said note, with interest, cost and attorneys' fees, which are fixed therein at ten per cent upon the amount collected.

4th.

Petitioner further shows that at the time of executing said mortgage, and for the purpose of further securing the payment of said note, appeared Mrs. Louie Clement, wife of O. P. Clement, who joined and authorized her therein, and they both waived all homestead rights and exemptions over the property described therein, and agreed that the same might be sold for the payment of said note, interest, attorneys' fees and cost.

5th.

Petitioner further shows that O. P. Clement has died, leaving as his heirs and legal representatives his surviving wife, Mrs. Louie Carter Clement, and four minor children, to wit: Luther Marion, Carrie Esther, Frank Patterson and Louie De Witt; that Mrs. Louie Clement has been duly appointed Tutrix to said minors, and has

been appointed Administratrix of the estate of her said husband, O. P. Clement, by the District Court of Webster Parish, as is
61 shown by succession proceedings on file in said Parish, and that she and said minors are residents of Webster Parish.

6th.

Petitioner shows that said debt is past due, and wholly unpaid notwithstanding amicable demands, and an executory process is necessary.

Wherefore, premises considered, and considering the note and certified copy of the act of mortgage hereto annexed, petitioner prays for an order of executory process herein, and after due and legal demands for payment that a writ of seizure and sale issue herein directing the Sheriff of Webster Parish to seize, and after due notice, advertisement, delays and all the legal formalities have been complied with, to sell the above described property, according to law, for cash, without appraisement, to pay and satisfy said sum of $2387.20, with eight per cent interest from Oct. 9th 1917 and ten per cent thereon attoorneys' fees, and all cost of said proceedings. And that the proceeds of said sale be paid to petitioner in preference to all other debts. Petitioner prays for notice to be given Mrs. Louie Clement, widow of O. P. Clement, and Administratrix of the succession of O. P. Clement, and as Tutrix to the minors, as the law directs, and for all other orders and decrees necessary and for general relief.

STEWART & STEWART,
Attorneys for Petitioner.

J. W. McDonald, after being sworn, states that he is Cashier of the Bank of Webster, and as such has the management and control of the affairs of said bank. That he has read over the above and foregoing petition, and that all the allegations of facts therein set forth are true and correct.

J. W. McDONALD.

Sworn to and subscribed before me this 14th day of November, 1917.

ROBT A. BAKER,
Notary Public.

Order.

By reason of the law and the annexed note and copy of the authentic act of mortgage importing a confession of judgment, and by reason of the foregoing petition and affidavit, it is ordered and decreed that notice of this application for a writ of seizure and sale, and demand for payment, be given to Mrs. Louie C. Clement as surviving widow of O. P. Clement, and as Administratrix of the estate of O. P. Clement, deceased, and as Tutrix to the minor
62 heirs of O. P. Clement. And if said debt is not paid in three days that a writ of seizure and sale issue to the Sheriff of Webster Parish ordering him to seize and sell, according to law, for

cash, without appraisement, the property described in the authentic act of mortgage hereto attached. And from the proceeds thereof pay to petitioner the sum of $2387.20, with 8% interest thereon from Oct. 9th, 1917, and 10% attorneys' fees and all cost of this proceeding by preference in accordance with the act of mortgage hereto attached.

Done and signed officially this 14th day of Nov. 1917.

J. N. SANDLIN,
Judge.

Endorsed: Filed Nov. 14th, 1917. J. F. McInnis, Dy. Clerk, D. C.

Acceptance of Service and Waiver of Citation by Attorney.

The widow, Mrs. Louie Clement individually and as Tutrix to minors and as Administratrix of the succession of O. P. Clement, deceased, waiving and renouncing the succession and community for herself and claiming no personal rights in the estate or by inheritance and without committing herself or binding herself in any way personally for any of the debts of deceased, accepts and acknowledges service and waives all citation and orders and finds no objection to the foreclosure but waives nothing as Tutrix and Administratrix cutting her off from contesting attorneys' fees and cost if it affects or comes out of succession, and also waives time and legal delays and notice of demand to pay debt.

L. K. WATKINS,
Att'y at Law for Mrs. Louie Clement Individually and as Tutrix and as Administratrix of Succession of O. Patterson Clement.

Note Attached to Petition of Plaintiff.

Filed by Plaintiff, Attached to Petition Nov. 14, 1917.

$2,387.20. Minden, La., Oct. 9, 1916.

On Oct. 9th, 1917, after date, I promise to pay to the order of The Bank of Webster, Twenty-three hundred, eighty-seven and 20/100 Dollars, for value received, with interest at the rate
63 of 8 per cent per annum after due, until paid with 10 per cent attorneys' fees for collection if not paid when due. Negotiable and payable at Bank of Webster. Having deposited as collateral security——. And in case this note shall not be paid when due, the holder is authorized to sell the said collaterals, or any part thereof, at any time thereafter at public or private sale without advertising same or giving notice, and to apply the net proceeds after paying all expenses, to the payment of this note; and if at any time before the maturity of this note, said collateral should depreciate below their present value, which is today estimated at least 5 per cent more than this debt, said holder shall have authority to demand ad-

ditional security, and if not furnished when so demanded, either in person or through notice left at — place of business or residence, or notice through the postoffice, this note shall immediately become due and the holder is thereby authorized to sell said collaterals at any time thereafter in the manner heretofore stated, and I hereby waive service, citation and time, and confess judgment in favor of the said Bank of Webster, any lawful holder thereof in above sum, including all interest, costs and 10 per cent attorneys' fees as above stipulated.

(Signed) O. P. CLEMENT.

Parapbed "Ne Varietur" by E. L. Stewart, Notary Public, across face.

Copy of Mortgage, Identified with Note.

Filed by Plaintiff, Attached to Petition, Nov. 14, 1917.

STATE OF LOUISIANA.
Parish of Webster:

Be it known that this day before me, E. L. Stewart Notary Public, in and for said Parish, duly commissioned and sworn, came O. P. Clement, husband of Louie Carter, of Webster Parish, Louisiana who declared he is indebted unto Bank of Webster of Minden, Webster Parish, Louisiana, in the sum of Twenty-three hundred, eighty-seven & 20 100 Dollars, in evidence of which indebtedness he has given his note dated with this act, payable to the order of said Bank of Webster, due October 9th, 1917 with 8 per cent interest from due and parapbed "Ne Varietur" of this date by me, Notary, to identify it herewith, and in order to secure the payment of said note, interest and all costs, including ten per cent attorney's fees on amount sued for, the said O. P. Clement declared that he does by these pre-
61 ents specially mortgage and hypothecate unto and in favor of said Bank of Webster, its successors and assigns or any future holder of said note the following described property situated in Webster Parish, Louisiana, to wit:

His residence and lot in the town of Minden, the land being surveyed by J. M. Davies, Parish Surveyor, when it was purchased from L. K. Watkins, as per deed of date Oct. 4th, 1902, which property is described as follows: A tract of land commencing at the intersection of Pearl & McIntyre Streets, shown by the map of the Miller & Watkins Addition to the town of Minden made by J. M. Davies Parish Surveyor, run 60 degrees East along Pearl Street 240 feet to 2nd corner; thence North 72 degrees East 107 feet to 3rd corner; thence South 80 degrees East 285 feet to 4th corner; thence North 39 degrees East 111 feet to 5th corner; thence North 18 degrees West 207.5 feet to 6th corner; thence North 87 degrees West 521 feet to 7th corner; and thence to initial point South one degree East along McIntyre Street a distance of 212 feet to the point of beginning. Said tract of land containing four acres.

At the same time personally appeared before me, the undersigned authority, Mrs. Louie Clement, wife of O. P. Clement, who joins and authorizes her herein, and after reading over this mortgage and having it fully explained to her, joins her husband and they both waive the homestead exemption and all other legal exemptions, and confess judgment in favor of the holder or holders of the above described note for principal, interest, attorneys' fees and cost.

The said O. P. Clement hereby bind- himself not to alienate, deteriorate or encumber said property to the prejudice of this mortgage, which shall import confession of judgment and waive benefit of appraisement.

The certificate of mortgages and tax receipt are hereby waived by the parties.

Done and passed at my office, in said Parish of Webster in the presence of R. A. Baker and J. W. McDonald, competent witnesses, on the 9th day of Oct. A. D. Nineteen hundred and sixteen.

O. P. CLEMENT.
MRS. LOUIS CLEMENT.

I authorize my wife to sign.

O. P. CLEMENT.

Attest:
R. A. BAKER.
J. W. McDONALD.

E. L. STEWART,
Notary Public.

5 Endorsed. Filed for record Oct. 9th, 1916, at 3 p. m. J. F. McInnis, Deputy Clerk, District Court. Recorded Oct. 7th, 1916, Vol. N, page 161. W. C. McKinney, Dy. Clerk & Ex-Officio Dy. Recorder.

TATE OF LOUISIANA,
Parish of Webster:

I hereby certify that the within is a true and correct copy of the riginal instrument, of which it purports to be a copy, and the enorsements thereon, as same appears on file and of record in this lice.

Given under my hand and seal of office at Minden, Louisiana the 3th day of November, A. D. 1917.

J. F. McINNIS,
Deputy Clerk & Ex-Officio Dy Recorder.

Writ of Seizure and Sale and Returns Thereon by Sheriff.

Filed by the Sheriff on January 12th. 1918.

Second District Court. Webster Parish. Louisiana.

No. 2987.

BANK OF WEBSTER

versus

O. P. CLEMENT.

To the Sheriff of Webster Parish. Louisiana. Greeting:

You are hereby commanded in the name of the State of Louisiana and of the Second Judicial District Court for the Parish of Webster. to seize and sell for cash to the highest bidder. after legal delays and advertisements and according to law. the following described property. to wit:

The O. P. Clement home place as described in the mortgage.

And out of the proceeds of said sale to pay to petitioner by preference over all other claims the sum of Twenty-three hundred eighty-seven Dollars and 20 cents with 8 per cent interest thereon from the 9 day of Oct. 1917. and ten per cent of said amount as attorney's fees and all costs of this suit as well as your own costs a and charges.

And what you do in the premises you make due returns thereof. together with this writ to our said Court as the law directs.

Witness the Honorable J. N. Sandlin. Judge of our said Court this 14th day of Nov. 1917.

J. F. McINNIS.
Dy Clerk Dist. Court.

66 *Returns on Back of Writ.*

Received the within writ of seizure and sale on Nov. 14. 1917. and on same day and date I executed same by seizing and taking into my possession the property described in the mortgage made to the Bank of Webster. and on Nov. 16. I advertised same in the Webster Signal a paper published in the town of Minden. Webster Parish. La. to be sold on Dec. 22. 1917 being 30 clear days from the date of advertisement to the day of sale.

And on said date during legal sale hours at the principal front door of the Court House of the Parish of Webster. La., I offered same for sale. after fulfilling all legal requirements. and at said offering the Bank of Webster offered $2,680.00. and that being the last and highest bid I knocked off the said property to the said Bank of Webster. and distributed the funds as follows.

Paid Sheriff's cost	$33.05	
Paid Clerk's cost	2.20	
Paid cost of insurance	1.10	
Paid Printer's bill	9.00	
Paid State and Parish tax	30.44	
Paid City tax	14.28	
		90.07
Amount of mortgage note		2,387.20
Interest to Dec. 22, 1917		38.72
Attorney's fee		175.00
		2,690.99

Balance due on this writ—$10.99.
And I now return this my proces verbal.

A. H. PHILLIPS,
Sheriff.

Attest:
C. R. DAVIS.

67 Second District Court, Webster Parish, Louisiana.

No. 2987.

BANK OF WEBSTER

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68 Second District Court, Webster Parish, Louisiana.

No. 68, Probate Docket.

SUCCESSION OF O. P. CLEMENT, Deceased, on Opposition of Bank of Minden et al.

Certificate of the Clerk.

I, J. F. McInnis, Chief Deputy Clerk of the Second District Court in and for the Parish of Webster, State of Louisiana, hereby certify that the within 71 pages, numbered from one (1) to seventy-one (71) do contain a true, correct and complete transcript of all the proceedings had, documents filed and evidence adduced upon the trial of the opposition of the Bank of Minden et al, to the homologation of the Account and Tableau filed by the Administratrix in the Succession of O. P. Clement, deceased, number 68 on the Probate Docket.

In testimony whereof, I have hereunto set my hand and affixed the impress of the seal of said Court, at the town of Minden, on this the third day of April in the year of our Lord, one thousand, nine hundred and nineteen, (1919).

[Seal Clerk's Office, Parish of Webster, State of Louisiana.]

J. F. McINNIS,
Chief Deputy Clerk.

(Note by Clerk of the Supreme Court of Louisiana:) Pages 69, 70 and 71 referred to in the certificate of J. F. McInnis, Chief Deputy Clerk of the Second District Court, parish of Webster, being simply indexes, have been placed in the front of this transcript, thereby avoiding repetition.

69 *Proceedings Had in the Supreme Court of Louisiana.*

(Transcript of Appeal Filed.)

Filed April 9th, 1919. (Signed) Paul E. Mortimer, Clerk.

No. 23474.

Supreme Court of Louisiana.

SUCCESSION OF O. P. CLEMENT, Deceased: Third Opposition of Bank of Webster, Bank of Minden, and Mrs. Louie Clement, Tutrix; Mrs. Louie Clement, Tutrix, and Mrs. Louie Clement, Administratrix, Appellant; Bank of Webster and Bank of Minden, Appellees.

(*Motion to Advance Cause.*)

In the Supreme Court of Louisiana.

No. 23474.

SUCCESSION OF O. P. CLEMENT.

Motion to Advance Case for Trial.

To the Honorable, the Supreme Court of the State of Louisiana:

The petition of Mrs. Louie Clement, Administratrix of the succession of O. P. Clement and Tutrix to the minors, appellants in the above styled case, with respect represents that the contest is over and matter at issue is distribution of the funds in her possession as Administratrix of the succession, and that this gives her the legal right to have the case on appeal advanced for trial, therefore moves and prays for the case to be put on the Summary Docket and advanced for trial, and that an early date as possible be fixed for the hearing of the cause.

In presenting this motion your appellants allege and show that the briefs, are herewith presented and service of copies on opposing counsel have been made as required by the Rules of the Court. That they have complied with all the legal requirements and have also served copies of this motion on opposing counsel, and move
70 and pray for case to be advanced for trial and for all orders necessary and for general relief.

(Signed) L. K. WATKINS,
Petitioners' Atty. at Law.

L. K. Watkins, the Att'y for the appellants in the above styled case sworn on oath states that all the facts and allegations in the above motion are true.

(Signed) L. K. WATKINS.

Sworn to and subscribed before me this the 15th day of April, 1919.

(Signed) J. F. McINNIS,
Dpy. Clerk Dist. Court, Parish of Webster, Louisiana.

Granted:
(Signed) F. A. M.,
Chief Justice.

(Endorsed on reverse:) No. 23,474. Supreme Court of Louisiana. Succession of Clement. Motion to Advance. Filed Apl. 17th, 1919. (Signed) Paul E. Mortimer, Clerk. Entered Apl. 21, 1919. (Sgd.) Paul E. Mortimer, Clerk.

(*Entering Order to Advance Cause.*)

(Extract from Minutes.)

At Chambers.

New Orleans, Monday, April 21st, 1919.

No. 23474.

SUCCESSION OF O. P. CLEMENT.

On motion of Mrs. L. Clement, Administratrix of the Succession of O. P. Clement and tutrix to the minors, appellants: It is ordered by the Court that this cause be placed on the summary docket and advanced for trial.

(Cause Continued.)

(Extract from Minutes.)

New Orleans, Friday, October 10th, 1919.

The Court was duly opened, pursuant to adjournment.

71 Present: Their Honors, Frank A. Monroe, Chief Justice; and Olivier O. Provosty, Walter B. Sommerville, Charles A. O'Niell and Ben C. Dawkins, Associate Justices.

No. 23474.

SUCCESSION OF O. P. CLEMENT, Deceased.

This cause, not having been reached, was ordered by the Court to be continued until Tuesday, the 14th day of October, 1919.

(Cause Called, Argued, and Submitted.)

(Extract from Minutes.)

New Orleans, Tuesday, October 14th, 1919.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors, Frank A. Monroe, Chief Justice; and Olivier O. Provosty, Walter B. Sommerville, Charles A. O'Niell and Ben C. Dawkins, Associate Justices.

No. 23474.

SUCCESSION OF O. P. CLEMENT, Deceased.

This cause came on this day to be heard, and the Court having listened to the argument of Mr. L. K. Watkins, for the administratrix and tutrix, appellants, took the cause under advisement.

(Final Judgment.)

(Extract from Minutes.)

New Orleans, Monday, November 3rd, 1919.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors, Frank A. Monroe, Chief Justice; and Olivier O. Provosty, Walter B. Sommerville, Charles A. O'Niell and Ben C. Dawkins, Associate Justices.

His Honor, Mr. Justice O'Niell, pronounced the opinion and judgment of the Court in the following case:

No. 23474.

SUCCESSION OF O. P. CLEMENT; 3rd Opposition of Bank of Webster, Bank of Minden, and Mrs. Louie Clement, Tutrix.

72 The judgment appealed from is annulled, and it is now ordered, adjudged and decreed that the demands of the opponents be rejected at their cost and that the proceeds or avails of the life insurance in contest be held exempt from liability for the debts due to the Bank of Minden and the Bank of Webster.

Their Honors, the Chief Justice and Mr. Justice Provosty, dissent.

His Honor, Mr. Justice Dunkin, concurs in the decree.

73 *Opinion of the Court.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

New Orleans, Monday, November 3rd, 1919.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors: Frank A. Monroe, Chief Justice; Olivier O. Provosty, Walter B. Somerville, Chas. A. O'Niell, Ben C. Dunkin, Associate Justices.

His Honor, Mr. Justice O'Niell, pronounced the opinion and Judgment of the Court in the following case:

74 November 3, 1919.

No. 23471.

SUCCESSION OF O. P. CLEMENT.

Appeal from the Second Judicial District Court, Parish of Webster.

John N. Sandlin, Judge.

Mr. Justice O'NIELL:

O. P. Clement died, intestate, in 1917, leaving a widow and five minor children, and an insolvent succession. Among the assets of the succession were two life insurance policies, payable "unto his executors, administrators or assigns," one in the New York Life Insurance Company, for $1,500, dated the 5th of February, 1909, and one in the Penn Mutual, for $3,000 dated the 5th of May, 1914. The widow was appointed and qualified as administratrix of the succession and as tutrix of her five minor children. She collected, as administratrix, $1,472 in settlement of the New York Life policy, and $2,961.33 on the Penn Mutual policy. Assuming that the $1,433.33 proceeds or avails of the life insurance were, by the Act No. 189 of 1914 (p. 356), amended and re-enacted by the Act No. 88 of 1916 (p. 206), exempt from liability for any debt, she placed the amount on her final account to the credit of the minor children, and asked that the account be approved.

The account was contested by the Bank of Minden, holding promissory note for the sum of $1,825 signed by the deceased, and by the Bank of Webster, holding a promissory note for $600 signed by the deceased, and by Robert Roberts, Jr., endorser of the latter note.

Opponents contended that the proceeds or avails of the life insurance should be applied to the debts due the banks.

Although the notes were issued and dated subsequent to
75 the enactment of the statute of 1916, they were given as renewals of notes of the same tenor, representing debts contracted by the deceased prior to the enactment of the statute of 1914. Opponents contended that the proceeds or avails of the life insurance could not be held exempt from liability for the debts contracted previous to the enactment of the statute of 1914, without giving the statute the effect of impairing the obligation of a contract, in violation of Section 10 of Article 1 of the Constitution of the United States and Article 156 of the Constitution of this state. Judgment was rendered in favor of opponents, declaring the proceeds or avails of the life insurance liable for the debts due the banks; and the curator of the estate of Le Blanc prosecutes this appeal.

Opinion.

By the Act No. 189 of 1914 (p. 376), the proceeds or avails (and by the amending Act No. 88 of 1916, the dividends) of all life insurance, fraternal and cooperative, health and accident insurance, were declared "exempt from all liability for any debt, except for a debt secured by a pledge of such policy, or any rights under such policy that had been assigned, or any advance payments made on or against such policy." The effect of the law was to exempt from liability for debts due by the assured the proceeds or avails of life insurance made payable to the executors, administrators or assigns of the assured, as was held in the Succession of LeBlanc, 142 La. 27, 76 South. 223. In that case it was held that the statute of 1914 exempted the proceeds or avails of life insurance collected on policies issued previous to the enactment of the law, from liability for debts contracted subsequent to the enactment; and that such application of the law did not violate the constitutional restriction against laws impairing the obligations of a contract.

Conceding, as we do, that, according to the decisions of this court, the bank's acceptance of the renewal notes did not operate
76 as a novation of the debts due the banks, our opinion is that canceling the old notes and taking new ones must have an important bearing upon the case. Because, assuming, as we must assume, that the bank officials and the endorser of the $8000 note knew of the enactments of 1914 and 1916, the endorsing by the one and accepting by the others of new notes, after the enactments of 1914 and 1916 had gone into effect, indicate that the endorser and the bank officials did not regard the liability of the proceeds or avails of any life insurance as a part of their debtor's obligation. It is highly probable, if not quite certain, that the endorser and the bank officials would not have done away with the prima facie evidence that the debts were contracted previous to the enactment of the statute of 1914 if there had been any obligation on the part of the debtor that would be impaired by the statute of 1914, without proof of the origin of the debts.

As a matter of fact, there was no obligation on the part of the debtor

to maintain insurance on his life for the benefit of his creditors, or in favor of his executors, administrators or assigns. There was no pledge or assignment of the policies, nor lien in favor of opponents. They testified that the deceased told them, when the loans were made, that his life was insured in favor of his estate, for an amount sufficient to protect all of his creditors. But it is not pretended that the life insurance formed a consideration or inducement for making the loans, or that the debtor was under any obligation to maintain insurance on his life, for the protection of his creditors. He was at liberty to let the policies lapse, or to change the beneficiaries, at any time. Hence the insurance in favor of the executors, administrators or assigns of the debtor was of little or no protection to his creditors, even before the statute of 1914 was enacted. There is no proof that either of the policies then had a cash surrender value. It is apparent that the $3,000 policy in the Penn Mutual had no cash surrender value before the statute of 1914 went into effect, because the
77 policy was then only three months old. It may be that the $1,500 policy, which was not introduced in evidence and is therefore not in the record, had a cash surrender value before the statute of 1914 went into effect; but that policy afterwards lapsed for non-payment of the premium, and the sum collected by the administratrix was the amount due for paid-up insurance.

It cannot be said that the statute of 1914 impaired any obligation on the part of the debtor, in this case, to maintain insurance on his life for the protection of his creditors, because he was never under such obligation. If the statute, by exempting from liability for his debts the proceeds or avails of any life insurance that the debtor might have in force at the time of his death, impaired the obligation of his contract to pay the debts represented by his promissory notes, the impairment was then indeed very slight and remote. For it would be beyond all reason to assume that the bank officials or the endorser of the $600 note had in mind, when these notes were negotiated, before the passage of the Act of 1914, the remote possibility of collecting the proceeds or avails of any life insurance that might be in force at the time of the death of the debtor.

It is now well settled by the decisions of the United States Supreme Court and of this Court, that a law exempting from seizure property already owned by a debtor at the time of the enactment of the law must not impair an obligation that was contracted by the debtor before the law went into effect. And it appears that that doctrine has been applied by the courts of some of the states to laws exempting the proceeds or avails of life insurance from liability for debt. See Rice v. Smith, 72 Miss. 42, 16 South. 417; Skinner v. Holt, 9 S. D. 427, 69 N. W. 595, 62 Am. St. R. 878; and In re Heilbron, 14 Wash. 536, 45 P. 153, 35 L. R. A. 662; cited in 12 C. J. 1076.

However logical the decision may have been in each of the
78 cases cited, we do not consider the ruling applicable to the facts of the case before us. The question whether the obligation of a contract has been impaired by a state statute of exemption is a federal question, for a decision of which the United States Supreme Court has not announced a definite rule. Each case must be considered on its merits; and the validity or invalidity of each statute, as applied to an antecedent contract, depends upon whether the

exemption has impaired the obligation of the pre-existent contract only slightly and remotely, or materially. 12 C. J. p. p. 1075-6, #748. In the case before us, the impairment of the obligation of the pre-existent contract, by the exemption allowed by the statute of 1914, was too remote to be regarded as a violation of the constitution.

The judgment appealed from is annulled, and it is now ordered, adjudged and decreed that the demands of the opponents be rejected at their cost and that the proceeds or avails of the life insurance in contest be held exempt from liability for the debts due to the Bank of Minden and the Bank of Webster.

Dawkins, J., concurs in the decree.
Monroe, C. J. and Provosty, J., dissent.

79 *(Motion for Rehearing and Brief in Behalf of Opponents in Support of Motion for Rehearing.)*

In the Supreme Court of Louisiana.

No. 23,174.

SUCCESSION OF O. P. CLEMENT.

Now into Court, through undersigned Counsel, comes the Bank of Minden, Bank of Webster and Robert Roberts, Jr., opponents and Appellees, in the above numbered and entitled cause, and moves and prays the Court to grant them a rehearing herein for the reason the judgment of this Honorable Court rendered herein is contrary to the law and the evidence, and is contrary to the law pointed out by this Honorable Court to support its decision.

Wherefore, Appearers pray that the judgment rendered herein, be set aside, and that a rehearing be granted them, and for general full and equitable relief in the premises.

(Signed) ROBERT ROBERTS, Jr.,
(Signed) J. S. ATKINSON.
Attorneys for Opponents, Appellees.

Brief on Behalf of Opponents, Bank of Minden, Bank of Webster, Robert Roberts, Jr., in Support of the Foregoing Motion for a Rehearing.

May it Please the Court:

We respectfully submit that the decision of this Honorable Court, by a divided Court, is contrary to the law and the evidence, and while this decision "is generous to the intestate's family, it is not just to his creditors."

It is conceded by the Court that the renewal of the notes was not a novation of the obligation of the debtor, but in this connection the decision says:

80 "It is highly probable, if not quite certain, that the endorser and the bank officials would not have done away with

the prima facie evidence that the debts were contracted previous to the enactment of the statute of 1914, if there had been any obligation on the part of the debtor that would be impaired by the statute of 1914, without proof of the origin of the debts."

Regardless what the opponents may have thought, regardless of any error of law on their part, their rights are and were fixed under the laws of the state and nation at the time the obligation was first created. Furthermore the law itself cannot be set aside by error or estopped (Ackerman vs. Lorner, 116 La. 1914). No authority is needed to apprise this Court of the fact that the laws of the land are read into every contract.

The decision further states:

"As a matter of fact, there was no obligation on the part of the debtor to maintain insurance on his life for the benefit of his creditors, or in favor of his executors, administrators or assigns."

Admitting that there was no obligation on the part of the debtor to maintain insurance on his life for the benefit of his creditors that is no reason that the acts of 1914 and 1916 do not impair an existing obligation.

The Court will not overlook the general law of Louisiana that all the property of the debtor is pledged to the payment of his debts, and as was said in the similar case of Burton vs. Farinholt 86 N. C. 260:

"The life policy in question was the property of the plaintiff's intestate. As soon as delivered, it vested him, and, like any other chose in action, became an integral part of his estate, subject to every rule of property known to the law. Being indebted to a state of clear insolvency at the time of his voluntary assignment to his daughters, his act was fraudulent as to his creditors and void in law, whether made with an intent actually fraudulent or not. It is a principle of the common, as old as the law itself, and upon which the preservation of all property depends, that except so far as the same may be exempt by positive law, the whole of every man's property shall be devoted to the payment of his debts." (Sec. 35 L. R. A. 601.)

The mere fact that a debtor may be under no obligation to own any property, or to hold any property for his creditors is no reason that his property is not pledged to the payments of his debts, and is no reason that a law exempting same from seizure would not impair the obligation of a contract, and be null and void. Your Honors make use of no such reasoning in the case of Crain vs. Magee 132 La. 311. In that case the facts were as follows:

May 16th, 1895, the plaintiff executed and delivered his note due six months after date. In 1898 the Constitution exempted certain property as homestead. In 1907 judgment was obtained on this note, and afterwards the homestead occupied by plaintiff and his family was seized and offered for sale, and this Court held that the homestead exemption did not apply, and as it would have the effect of impairing the obligation of the note, which was not se-

cured by any mortgage, but was a plain note just exactly like Clement's.

In this case your Honors did not say that the obligation was not impaired because Crain was under no obligation to own property out of which the debt could be paid. In fact that is the kind of argument that Crain made to this Court and which your Honors rejected in the following language:

"The holder of the note, the defendant, had a right to have seized all of plaintiff's property. To the end of defeating that right, plaintiff cannot plead that which he might have done, that is, that he might have seized or sold the property as it is not a factor in determining the issues. Taking the facts as they are, defendant's rights begin with the date of the note.

We insist that the Court again read this decision of Crain vs. Magee, approving the decision of Blouis vs. Ledet, 109 La. 710, and the decisions of the Supreme Court of the United States referred to therein. Further on in the decision of the Court the same line of reasoning is used, wherein Justice O'Neil said:

"It cannot be said that this statute of 1914 impaired any obligation on the part of the debtor, in this case, to maintain insurance 82 on his life for the protection of his creditors, because he was never under such obligation."

The opponents have not contended in this case that there was any agreement on the part of the debtor to carry any insurance and that this was the obligation impaired; but what they contend is that the debtor's obligation to pay his note was impaired by these acts of 1914 and 1916, if enforced, in this case by which opponents' remedy for the collection of what is due them is destroyed.

The Court finds that this Succession is insolvent. The records show that the creditors will not collect one cent if these subsequent exemption laws are enforced; then certainly the rights of these opponents have been impaired, in fact their contracts have been destroyed.

As was said in the case of Edwards vs. Kearsey, 595, approved by your Honors in both the Crain and Blouis cases above referred to:

"The remedy subsisting when a contract is made is a part of its obligation, and any subsequent law of the state which so effects it as substantially to impair and lessen the value of the contract, is forbidden by the constitution and is void."

If the decision of this Court is permitted to stand, then opponents will recover nothing, notwithstanding the fact that the debt was created prior to the date of the exemption Acts, and at a time when there existed a remedy that they now ask the Court to enforce, and in this connection we ask the Court to review our supplementary brief wherein we refer you to the decision of the Succession of Jacob E. Moseman, 38 Ann. 219 holding:

"A policy of insurance upon the life of a man vests the right to the policy, and to the fund arising on the happenings of the loss at the date of the execution of the contract."

We now call your Honor's special attention to the concluding language of this Court in its decision.

"It is now well settled by the decision of the United States Supreme Court and of this Court, that a law exempting from seizure property owned by a debtor at the time of the enactment of a law must not impair an obligation that was contracted by
83 the debtor before the law went into effect. And it appears that that doctrine has been applied by the court to some of the states to laws exempting the proceeds or avails of life insurance from liability for debt." See Rice v. Smith, 72 Miss. 16 South. 417; Skinner v. Holt, 91 S. D. 427, 69 N. W., 595, 62 Am. S. R. D. 878, and in re. Heilborn, 14 Wash. 636, 45 P. 153, 35 L. R. A. 602, cited in C. J. 1076. However, logical this decision may have been in each of the cases cited, we do not consider the ruling applicable to the facts of the case before us. The question whether the obligation of a contract has been impaired by a state statute of exemption is a federal question, for a decision of which the United States Supreme Court has not announced a definite rule. Each case must be considered on its merits and the validity or invalidity of each statute, as applied to an antecedent contract, depends upon whether the exemption has impaired the obligation of the pre-existent contract only slightly and remotely or materially. 12 C. J., pp. 1075-6 748."

We are at a loss to understand how Your Honors could hold that this impairment is slight and remote, when the record shows that the opponents would recover their entire debts from this insolvent succession were it not for these exemption laws, and that they will not recover one cent if this decision stands, and this subsequent law is enforced. Instead of this law only remotely and slightly impairing the opponents obligations, it destroys them completely.

Finally we desire to call your Honors' attention to this indisputable fact. In this decision you claim to be following what the editor says in Section 748, Page 1076, 12th Vol. of Corpus Juris, to-wit:

"The result of the authorities seems to be that each case will be considered on its own merits, and the validity of each statute will be made to depend on whether or not it materially increases the exemption allowed by the law in force when the prior contract was made. 85."

It will be seen that the Editor refers us to foot notes under number 85, which foot-notes under 85, includes the very deci-
84 sions that we referred the Court to in our brief, and the very decisions that your Honors refer to in your decision, but refused to follow. In other words, your Honors have fallen into the error of accepting what the Editor had to say in this matter, and rejecting the decisions he refers us to in support of his position.

In the same section 748, the Editor said:

"The rule now established by the United States Supreme Court however, is that laws materially extending exemptions from attachment or execution are, so far as they relate to previously contracted debts, unconstitutional, as impairing the obligation of contracts by destroying the remedy in material respects. And in the application of the doctrine many statutes have been declared void by the state courts. 84."

Under foot-note 84 are included many decisions by the state and federal courts, among them being Crain vs. Magee, 132 La. 312. New Orleans Canal Company vs. New Orleans, 31 Ann. 1371.

We respectfully submit that the decision of your Honors herein is not supported by any decision of any Court, and we respectfully submit that the judgment rendered herein should be set aside, and a rehearing granted opponents, and we so pray.

Respectfully submitted,

(Signed) ROBERT ROBERTS, JR.,

(Signed) J. S. ATKINSON,

Attorneys for Bank of Minden, Bank of Webster, Robert Roberts, Jr., Opponents and Appellees.

(Endorsed on reverse:) No. 23,474. Succession of O. P. Clements. Motion for Rehearing and Brief in Behalf of Opponents in Support of Motion for Rehearing. Filed Nov. 17, 1919. (Signed) John A. Klotz, Dep. Clerk.

(Rehearing Refused.)

(Extract from Minutes.)

New Orleans, Monday, January 5th, 1920.

85 The Court was duly opened, pursuant to adjournment.

Present: Their Honors Frank A. Monroe, Chief Justice, and Olivier O. Provosty, Walter B. Sommerville, Charles A. O'Niell and Ben C. Dawkins, Associate Justices.

No. 23,474.

SUCCESSION OF O. P. CLEMENT, Deceased.

It is ordered that the rehearing applied for in this case be refused.

BY THE COURT.

86 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that the foregoing 85 pages contain a full, true and complete copy of the proceedings had in the Second Judicial District Court, for the Parish of Webster, in a certain suit entitled: Succession of O. P. Clement, Deceased—(Third Opposition

of Bank of Webster, Bank of Minden and Mrs. Louie Clement, Tutrix;) and, also, of all the proceedings had in this, the Supreme Court of Louisiana on the appeal taken by Mrs. Louie Clement, Tutrix and Mrs. Louie Clement, Administratrix, which appeal is now on the files thereof, under the No. 23474.

In witness whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the city of New Orleans, this the 23rd day of January, Anno Domini, one thousand, nine hundred and twenty.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court, State of Louisiana.

87 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Frank A. Monroe, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Paul E. Mortimer is Clerk of the Supreme Court of the State of Louisiana; that the signature of Paul E. Mortimer to the foregoing certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the city of New Orleans, this the 23d day of January, Anno Domini, one thousand, nine hundred and twenty.

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
Chief Justice, Supreme Court of Louisiana.

88 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that the Supreme Court of the State of Louisiana is the highest Court of law in Louisiana, and that the Honorable Frank A. Monroe is the Chief Justice of said Court and that his signature to the foregoing certificate is genuine.

In testimony whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the city of New Orleans, this the 23d

day of January, Anno Domini, one thousand, nine hundred and twenty.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court, State of Louisiana.

89 *Petition for Writ of Error.*

To the Honorable Frank A. Monroe, Chief Justice of Supreme Court of Louisiana:

Now comes Bank of Minden, Bank of Webster, and Robert Roberts, Jr., plaintiffs in opposition to the final account of Louie Clements, Administratrix, and represent to the Court that on the 3rd day of November 1919 a judgment was duly entered by the Supreme Court of Louisiana, the highest court in said state, reversing and setting aside a judgment in favor of petitioners entered by the Second District Court in and for Webster Parish, State of Louisiana, wherein petitioners were plaintiffs and Louie Clements, Administratrix of the Succession of O. P. Clements, was defendant.

And petitioners represent that this is an action by each of them as a creditor contesting the final account filed by Louie Clements, Administratrix, of the Succession of O. P. Clement, and in this connection further show that among the assets of the insolvent succession were two life insurance policies of O. P. Clement, deceased, payable "unto his executors, administrators, or assigns" and the administratrix collected under these policies as administratrix the aggregate sum of Four Thousand, Four Hundred & Thirty-three & 33/100 ($4,433.33) Dollars, and claiming to act under Act 189 of 1914 as amended and re-enacted by Act 88 of 1916 of the General Assembly of the State of Louisiana exempting from liability for any debts the proceeds and avails of life insurance policies she placed the amount thus collected to the credit of the children of O. P. Clement, deceased, and asked that the account be approved.

Your petitioners further represent that as creditors of O. P. Clement, deceased, they contested this action and the account of the administratrix, and filed oppositions to same, and contended that the proceeds and avails of the life insurance policies thus collected should be applied to the payment of the respective debts of petitioners, and in this connection your petitioners contend that the amounts due them were on obligations created prior to the enactment of the aforesaid exemption statutes and that the policies of insurance were taken out by the deceased on his life payable to his "executors, ad-
90 ministrators or assigns" prior to the enactment of the exemption statutes aforesaid, and that if these exemption acts were enforced it would have the effect of impairing the obligations of the deceased contracted with each of the opponents. And each of your opponents specially urged in their petition of opposition before the lower court and in the Supreme Court of Louisiana, that:

"That said Acts are in violation of Section 10 of Article 1 of the Constitution of the United States in that they impair the obligations of the contracts herein set up and which were entered into before the enactment of the laws."

And your petitioners aver that on January 5th, 1920, the aforesaid judgment of this Honorable Court became final when petitioners' motion for the rehearing was over-ruled on that date.

And your petitioners show that the said judgment and decision and interpretation of the Acts of the General Assembly of the State of Louisiana were, and are, repugnant to the said Article 10 of the Constitution and laws of the United States.

Your petitioners further aver that in the aforesaid judgment and proceedings certain errors were committed to the prejudice of your petitioners, all of which will more fully appear from the assignment of errors which is filed herewith.

Wherefore, your petitioners pray that a Writ of Error from the Supreme Court of the United States may issue in this case to the Supreme Court of the State of Louisiana for the correction of error so complained of, and that a transcript of record proceedings and papers in this cause, authenticated by the Clerk of the Supreme Court of the State of Louisiana, may be sent to the Supreme Court of the United States as provided by law.

Dated New Orleans, Louisiana, 5th day of January, 1920.

HAMPDEN STORY,
J. S. ATKINSON,
ROBERT ROBERTS, JR.,
Attorneys for Petitioners and Plaintiffs in Error.

[Endorsed:] No. 23,474. Supreme Court Louisiana. Succession of O. P. Clement, deceased. Petition for Writ of Error. Filed Jany 5th, 1920. Percy J. Heines, Deputy Clerk.

91 *Assignment of Errors.*

In the Supreme Court of the United States.

In re SUCCESSION OF O. P. CLEMENTS, Deceased; BANK OF MINDEN et als.

vs.

LOUIE CLEMENTS, Administratrix.

Assignment of Errors.

Error to Supreme Court.

Now comes Bank of Minden, Bank of Webster, and Robert Roberts, Jr., petitioners and plaintiffs in error, by Hampden Story, J. S. Atkinson, and Robert Roberts, Jr., attorneys, and in connection with their petition for the Writ of Error show that, in the record and pro-

ceedings, and on the rendering of the judgment and decision of the Supreme Court of the State of Louisiana, in the above entitled cause, manifest error has intervened to the prejudice of these petitioners and plaintiffs in error in this to-wit:

First. The Court erred in holding that Act 189 of 1914, as amended and re-enacted by the Act 88 of 1916 of the General Assembly of the State of Louisiana, was constitutional and did not violate Section 10, Article I of the Constitution of the United States, and did not impair the obligations of their contracts with O. P. Clements, deceased.

Second. The Court erred in reversing the judgment of the lower court, and holding that the proceeds and avails of the life insurance policies in contest were exempt from liability for the debts due plaintiffs in error for the reason such holding and enforcement of Act 189 of 1914 and Act 88 of 1916 was in violation of Section 10 of Article I of the Constitution of the United States inasmuch as it impaired the obligations of the contracts of plaintiffs in error with O. P. Clements, deceased.

By reasons whereof these petitioners and plaintiffs in error pray that the said judgment of the Supreme Court of Louisiana may be reversed.

Dated New Orleans, Louisiana, the 5th day of January, A. D. 1920.

HAMPDEN STORY,
J. S. ATKINSON,
ROBERT ROBERTS, Jr.,
Attorneys for Petitioners and Plaintiffs in Error.

[Endorsed:] No. 23474. Supreme Court Louisiana. Succession of O. P. Clement, deceased. Assignment of errors. Filed Jany. 5, 1920. Percy J. Heines, Dep. Clerk.

92 *Order Granting Writ of Error.*

SUCCESSION OF O. P. CLEMENTS, Deceased: BANK OF MINDEN et al.

vs.

LOUIE CLEMENT, Administratrix.

On reading of the petition of the Bank of Minden, Bank of Webster, and Robert Roberts, Jr. for Writ of Error, and the Assignment of Errors, and upon due consideration of the record of said cause:

It is ordered, That a Writ of Error be allowed from the Supreme Court of the United States to the Supreme Court of the State of Louisiana as prayed for in said petition, and that said Writ of Error and Citation thereon be issued, served and returned to the Supreme Court of the United States in accordance with law upon condition that the said petitioners and plaintiffs in error, Bank of Minden, Bank of Webster, and Robert Roberts, Jr., give security in the sum

of $1,000.00, that the said plaintiffs in error shall prosecute said Writ of Error to effect and, if said plaintiffs in error fail to make their plea good shall answer to the defendant in error for all costs and damages that may be adjudged or decreed on account of said Writ of Error.

And the said plaintiffs in Error now presenting a Bond in the sum of One Thousand ($1,000.00) Dollars with United States Fidelity & Guaranty Company, as surety, it is ordered that the same be and is hereby duly approved.

In witness whereof, I have hereunto set my hand this 5th day of January, A. D. 1920.

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] 23474. Supreme Court Louisiana. Succession of O. P. Clement, deceased. Order granting writ of error. Filed Jany 5, 1920. Perry J. Heines, Dep. Clerk.

93 *(Copy of Bond for Writ of Error.)*

Know all men by these presents: That we, Bank of Minden, Bank of Webster, and Robert Roberts, Jr. as principals, and United States Fidelity and Guaranty Company as surety, are held and firmly bound unto Louie Clement, Administratrix of the Succession of O. P. Clement, deceased, in the sum of one thousand ($1,000.00) Dollars to be paid to the said Louie Clements, Administratrix, to which payment well and truly to be made we bind ourselves jointly and severally by these presents.

Sealed with our seals and dated this 5th day of January, A. D. 1919.

(Signed) BANK OF MINDEN,
By J. S. ATKINSON,
Attorney.
(Signed) BANK OF WEBSTER,
By J. S. ATKINSON,
Attorney.
(Signed) ROBERT ROBERTS, Jr.
UNITED STATES FIDELITY & GUARANTY CO. OF MARYLAND,
By (Signed) GLEN M. WALKER,
Att'y in Fact. [SEAL.]

Whereas, the above named plaintiffs in error, Bank of Minden, Bank of Webster, and Robert Roberts, Jr. have sued out a Writ of Error from the United States Supreme Court to the Supreme Court of the State of Louisiana to reverse the judgment of the Supreme Court of the State of Louisiana rendered on the 3rd day of November

1919, and which became final on the 1st day of December, 1919, in the suit of Succession of O. P. Clement, deceased, Oppositions of Bank of Minden, Bank of Webster, and Robert Roberts, Jr. No. 23474 Docket of the Supreme Court of the State of Louisiana;

Now, therefore, the condition of this obligation is such that, if the above named plaintiffs in error shall prosecute their said writ of error to effect and answer all costs and damages that may be adjudged, if they shall fail to make good their plea, then this obligation is to be void; otherwise, to remain in full force and effect.

(Signed) BANK OF MINDEN,
By J. S. ATKINSON,
Attorney.
(Signed) BANK OF WEBSTER,
By J. S. ATKINSON,
Attorney.
94 (Signed) ROBERT ROBERTS, JR.
(Signed) UNITED STATES FIDELITY & GUARANTY CO. OF MARYLAND,
By (Signed) GLEN M. WALKER,
Attorney in Fact. [SEAL.]

Approved this 5th day of January, A. D. 1920.
[SEAL.] (Signed) FRANK A. MONROE,
Chief Justice of Supreme Court of Louisiana.

[Endorsed:] No. 23474. Supreme Court Louisiana. Succession of O. P. Clement, deceased, vs. Copy bond for writ of error. Filed Jan'y 5th, 1920. (Signed) Percy J. Heines, Dep. clerk.

95 *Supplemental Petition for Writ of Error & Order.*

To the Honorable Frank A. Monroe, Chief Justice of the Supreme Court of Louisiana:

Now comes the Bank of Minden, Bank of Webster and Robert Roberts, Jr. and supplementary to their petition and prayer for a writ of error heretofore filed for a review of judgment of this Honorable Court dismissing the opposition of your appearers, and represent: that they erroneously omitted to apply for and pray for an order of supersedeas and that they now in order to correct said error pray that an order of supersedeas may be entered herein pending the final disposition of this cause.

New Orleans, La. January 9th, 1920.

HAMPDEN STORY,
ROBERT ROBERTS, JR.,
J. S. ATKINSON,
Attorneys for Petitioners and Plaintiffs in Error.

Order.

The foregoing considered in connection with the original application for writ of error and bond filed herein, it is now ordered that the writ of error allowed operate as a supersedeas.

New Orleans, La. January 9th, 1920.

FRANK A. MONROE,
Chief Justice of the Supreme Court of Louisiana.

[Endorsed:] No. 23474. Supreme Court Louisiana. Succession of O. P. Clement. Supplement-petition for writ of error asking for supersedeas and order of court. Filed Jan'y 9, 1920. Paul E. Mortimer, clerk.

96 *Endorsement.*

This bond shall apply and our liability shall extend and cover any supersedeas order that the Chief Justice of the Supreme Court of Louisiana may grante in the case in which this bond has been executed.

Dated at New Orleans, La. this Ninth day of January, 1920.

UNITED STATES FIDELITY & GUARANTY COMPANY,

(Sgd.) By H. T. AUCOIN,
Its Attorney in Fact. [SEAL.]

97 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Louisiana (before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Bank of Minden and others, Opponents, versus Mrs. Louie Clement, Administratrix, in the Succession of O. P. Clement, deceased, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construc-
tions of the clause of the Constitution, or of a treaty, or statute
98 of, or commission held under the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Bank of Minden, Bank of Webster and Robert Roberts, Jr., plaintiffs in opposition to the final account of Mrs. Louie

Clements, Administratrix, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, the 10th day of January, in the year of our Lord one thousand nine hundred and twenty.

[Seal U. S. District Court for the Eastern Dist. of La., N. O. Div.]

H. J. CARTER,
Clerk of the District Court of the United States
for the Eastern District of Louisiana.

Allowed by

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
Chief Justice of the Supreme Court of Louisiana.

[Endorsed:] No. 23,474. Bank of Minden and others, Opponents, plaintiffs-in-error, versus Mrs. Louie Clements, Administratrix, In the Matter of the Succession of O. P. Clements, defendant-in-error. Writ of Error. Filed Jan'y 10, 1920. Paul E. Mortimer, Clerk.

Certificate of Lodgment.

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that there was lodged with me, as such Clerk, on January 5th, 1920, in the cause entitled: Bank of Minden and others, Opponents, plaintiffs-in-error, vs. Mrs. Louie Clements, Administratrix, In the Matter of the Succession of O. P. Clements, defendant-in-error:—

1st. The original petition for writ of error as herein set forth.

2nd. The original assignment of errors as herein set forth.

3rd. The original writ of error, as herein set forth.

4th. Two copies of the writ of error; one copy to be served on the defendant in error and one copy to be lodged in my office.

5th. The bond for writ of error, a copy of which is herein set forth.

I further certify that there was lodged with me, on January, 9th, 1920, in the same cause:—

1st. Supplemental petition for writ of error, the order of the Court allowing the same and the endorsement as to the bond.

In witness whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the City of New Orleans, this the 23d day of January, A. D. 1920.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk of the Supreme Court of Louisiana.

100 *Citation on Defendant in Error, with Marshal's Return Thereon.*

THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Mrs. Louie Clements, administratrix of the Succession of O. P. Clements, Deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana, at New Orleans, wherein the Bank of Minden and others are opponents, plaintiffs-in-error, and Mrs. Louie Clements, Administratrix, In the Matter of the Succession of O. P. Clements, is defendants-in-error, to show cause, if any there be, why the judgment rendered against the said Bank of Minden and others, opponents-plaintiffs-in-error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this 10th day of January, in the year of our Lord one thousand nine hundred and twenty.

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
Chief Justice of the Supreme Court of the State of Louisiana.

Received this writ on January 12th, 1920, and on the same day, month and year I executed same by serving a certified copy of the citation of appeal, together with a certified copy of the writ of error on Mrs. Louie Clements, Administratrix, defendant in error, in person in the City of Shreveport, Caddo Parish, Louisiana. Returned same day. This January 12th, 1820.

J. H. KIRKPATRICK,
U. S. Marshal, Western District of Louisiana.
By G. E. GEREN,
Deputy U. S. Marshal.

[Endorsed:] Marshal's Docket No. 1951. Supreme Court of the State of Louisiana. No. 23,474. Bank of Minden and others, Opponents, plaintiffs-in-error, vs. Mrs. Louie Clements, Administratrix, In the Matter of the Succession of O. P. Clements, defendant-in-error. Citation to Mrs. Louis Clements, Administratrix. Sheriff's —. Received, U. S. Marshal's Office, Shreveport, La., Jan. 12, 1920. Filed January 14, 1920. Percy J. Heines, Deputy Clerk.

101 *Return to Writ.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the city of New Orleans, this the 23d day of January, Anno Domini, one thousand, nine hundred and twenty.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

Endorsed on cover: File No. 27,461. Louisiana Supreme Court, Term No. 706. Bank of Minden, Bank of Webster, and Robert Roberts, Jr., plaintiffs in error, vs. Mrs. Louie Clement, administratrix of the succession of O. P. Clement, deceased. Filed February 3d, 1920. File No. 27,461.

In the Supreme Court of the United States.

No. 706.

BANK OF MINDEN, BANK OF WEBSTER, AND ROBERT ROBERTS, JR., *Plaintiffs in Error,*

vs.

MRS. LOUIE CLEMENTS, ADMINISTRATRIX OF THE SUCCESSION OF O. P. CLEMENTS, *Deceased.*

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

ORIGINAL BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

STATEMENT OF FACTS.

On April 4th, 1918, Louie Clements as the qualified administratrix of the Succession of O. P. Clements, deceased, filed her account and tableaux of debts in the Second District Court of Webster Parish, Louisiana, wherein she listed and treated as exempt from the payment of debts of this insolvent Succession the sum of $4,433.33 (see page 14 to 16 of record), which sum she had collected as the proceeds of certain insurance policies the deceased had carried on his life, made payable to his "executors, administrators or assigns."

The two policies of insurance were issued on the life of the deceased by the New York Life Insurance Company and the Penn Mutual Life Insurance Company, on Feb-

ruary 5th, 1909 and May 4th, 1914, respectively, and prior to the enactment of Act No. 189 of 1914, as amended by Act No. 88 of 1916, of the General Assembly of Louisiana, under the terms of which legislation the administratrix claimed that the proceeds of the policies were exempt from the payment of any debts of the succession.

Not only were the policies issued prior to the enactment of the aforesaid exemption laws, but the indebtedness of the deceased to the plaintiffs in error was also contracted prior to the enactment of such statutes.

Plaintiffs in error filed oppositions to the account of the administratrix wherein it was urged that the State exemption laws of 1914 and 1916 did not apply to or affect the obligations of the deceased of a date prior to the enactment of such legislation, and to enforce these exemption laws against the indebtedness of the deceased to the plaintiffs in error would impair such prior obligations contrary to the Constitution of the United States (pages 17 to 23 of record). The Second District Court in which this matter was pending, rendered judgment in favor of plaintiffs in error maintaining their oppositions and ordered that the proceeds of these insurance policies be applied to the payment of their claims.

On appeal to the Supreme Court, that tribunal by an almost evenly divided court reversed the judgment of the lower court and held that:

> "The question whether the obligations of the contract has been impaired by a State statute of exemption is a Federal question for a decision of which the United States Supreme Court has not announced a definite rule. Each case must be considered on its merits; and the validity or invalidity of each statute, as applied to an antecedent contract, depends upon whether the exemption has impaired the obligation of the pre-existent contract only

slightly and remotely, or materially. In the case before us, the impairment of the pre-existent contract by the exemption allowed by the statute of 1914, was too remote to be regarded as a violation of the constitution." (See decision of court pages 74 to 77 of record).

After a motion for rehearing had been filed and overruled by the Supreme Court, a petition was filed and writ of error allowed to the Supreme Court of Louisiana, to which was attached the assignment of errors as follows:

"First. The court erred in holding that Act No. 189 of 1914, as amended and re-enacted by the Act No. 88 of 1916 of the General Assembly of the State of Louisiana was constitutional, and did not violate Section 10, Article 1 of the Constitution of the United States, and did not impair the obligations of their contract with O. P. Clements, deceased."

"Second. The Court erred in reversing the judgment of the lower court and holding that the proceeds and avails of the life insurance policies in contest were exempt from liability for the debts due plaintiffs in error for the reason such holding and enforcement of Act No. 189 of 1914, and Act No. 88 of 1916 was in violation of Section 10, Article 1 of the Constitution of the United States, in as much as it impaired the obligations of the contracts of plaintiffs in error with O. P. Clements, deceased." (Pages 83 to 85 of record).

Defendant in error has filed a motion to dismiss this appeal, alleging that plaintiffs in error should have proceeded herein by writ of certiorari and not by writ of error, which motion to dismiss has been referred to the merits.

ARGUMENT.

On motion to dismiss the court's attention is directed to the fact that a Federal question was raised at the beginning in the Second District Court of Webster Parish, Louisiana, as shown by the petition of plaintiff in error, which Federal question was urged in the Supreme Court of Louisiana, and again urged in the petition for the writ of error as shown by the printed record in this case. From the very beginning the validity of Act No. 189 of 1914 as amended by Act No. 88 of 1916, of the General Assembly of Louisiana, has been drawn in question on the ground that such Act is repugnant to the Constitution of the United States, and it is, therefore, submitted that under section 237 of the Judicial Code, as amended by Act December 23rd, 1914, c 2, and Act of September 6th, 1916, c 448, section 2, that the writ of error was the legal and proper remedy to be exercised in this case.

DATE OF OBLIGATIONS.

As found by the District Court and the Supreme Court of Louisiana, (page 75 of record), the debts due plaintiffs in error were "contracted by the deceased prior to the enactment of the statute of 1914." And that "among the assets of the succession were two life insurance policies payable 'unto his executors, administrators or assigns,' one New York Life Insurance Company for $1500.00 dated the 5th day of February, 1909, and one in the Penn Mutual Life Insurance Company for $3,000.00, dated the 4th day of May, 1914" (see decision Supreme Court of Louisiana, page 74).

And while it is true the original notes first given for the debts of the deceased were renewed from time to time, they were simply evidences of the original debt, and, as the Supreme Court, held such renewal notes did not in any manner novate or extinguish the original debt:

"Novation is never presumed. The intention to make it must result clearly from the terms of the agreement and by the full discharge of the original debt, or by substituting a new debtor in place of the old one, with the consent of the creditor." Revised Civil Code of Louisiana, Article 2190, Kempe *vs.* Hunt, 4, La. 777, 483; (1844 Gillet *vs.* Rachal, 9 Rob. 276; (1845) Musson *vs.* Richardson, 11 Rob. 39, 43 (1847), Parker *vs.* Alexander 2 La. Ann. 188 (1849) Jacob *vs.* Calderwood, 4 La. Ann. 509 (1849) Short *vs.* New Orleans, 4 La. Ann. 281 (1850) Goldschmidt *vs.* New Orleans, 5 La. Ann. 436 (1850) Lee Lande *vs.* Breaux, 5 La. Ann. 505 (1851) Marsh *vs.* Perry 6 La. Ann. 660 (1854) Pattison *vs.* Creditors 9 La. Ann. 288 (1855) Overend *vs.* Robinson 10 La. Ann. 728 (1856) Desloucher *vs.* Rachal, 11 La. Ann. 687 (1857) Smith *vs.* Brown 12 La. Ann. 299, (1858) Choppin *vs.* Gobbold, 14 La. Ann. 238 (1859) Gails *vs.* Schooner Osceola 14 La. Ann. 54 (1859) Helme *vs.* Middleton, 14 La. Ann. 484, (1872) Levy *vs.* Pointcoupee, 24 La. Ann. 292, 293.

"A promissory note does not work a novation of the debt." Turpin *vs.* Creditors, 9 Mart. (O. S.) 562.

"A note renewed by another is not novated." Hobson *vs.* Davidson, 8 Mart. (O. S.) 422, 431, 13 Ann. Dec. 294.

IMPAIRMENTS OF OBLIGATIONS OF CONTRACTS.

The policies of insurance having been issued and the debts having been contracted prior to the enactment of the exemption legislation of 1914 and 1916, it is respectfully submitted that such Acts are unconstitutional in so far as all prior debts and policies are concerned, for the reason they impair the obligations of contracts.

In the case of Sabatier et al *vs.* Their Creditors, 6 Martin (New Series) 585, decided by the Supreme Court of Louisiana, it was held:

> "A law passed after a contract which would exempt all the property of the obligor from the payment of the debt, would be unconstitutional."

In arriving at this conclusion the Louisiana Supreme Court referred to an early decision of this Honorable Court as follows:

> "In the case of Stuerges *vs.* Crowinshield 4 Wheaton 122 in the Supreme Court of the United States, it was admitted in argument that all the present property of the debtor was responsible to the creditor, but it was urged that the obligation did not go so far as to make future acquisitions subject to it. The court, however, said, that both *present* and *future* were, and to release *the latter* from liability impaired the obligation."

Thus, it will be seen that it is not the time that a person acquires property that determines whether or not it is exempt from seizure, but it is the time of the creation or the coming into existence of the debt or obligation that controls. And for this reason, the creditor look to the *after acquired* property of the debtor as well as to his present possessions, as was held by Chief Justice Marshall in Stuerges *vs.* Crowinshield, *supra*, and it has, therefore, been held that a statute creating an exemption out of *after acquired* property, is void as to existing creditors. Johnson *vs.* Mississippi, 54, 628–28 S. R. 388.

And, hence, if it should be admitted for the purpose of argument that the proceeds of these insurance policies is after acquired property, they are not exempt for the reason the obligations were in existence prior to the enactment of the exemption laws. But the court will treat the proceeds of these policies as property acquired *as of the date of the policies*, which indeed, makes the position of the opponents in this case very strong.

> "A policy of insurance upon the life of a man *vests* the rights of the policy and to the *fund* arising on the happenings of the loss, at the date of the execution of the contract. This has been frequently held in cases where third persons are beneficiaries and the same rule must apply when the beneficiary is the insured, himself, or his administrators, executors or assigns. Hence, when such a policy is taken our by an unmarried man the rights and interests thereunder belong to his separate estate, and do not fall into a community existing under a subsequent marriage. "Succession of Jacob E. Moseman, 38 Ann. 219.

The decision of the Supreme Court of Louisiana in the case at bar is not only contrary to the jurisprudence of this State, but it is contrary to the decisions of this Honorable Court; and in this connection, we desire to call the court's attention to two decisions of this Honorable Court, which were followed by two decisions of the Supreme Court of the State of Louisiana, and we feel certain that after the court has considered these decisions it will not hesitate to hold that the exemption laws if enforced in this case will impair the obligations of contracts.

In the case of Edwards *vs.* Kearzey 98 U. S. 595, it was held:

> "The provisions in the constitution of a state which exempts from sale under execution every homestead not exceeding in value of one thousand dollars is invalid as regards contracts made before the adoption of the constitution." The remedy subsisting when a contract is made is a part of its obligation, and any subsequent law of the state which so effects it as substantially to impair and lessen the value of the contract, is forbidden by the constitution and is void."

The obligation involved in the above case was evidenced by a bond, which is the same character of debt as a note, and since this obligation, evidenced by a bond was in

existenced before the constitutional exemption was passed, the court properly held the law, impairing and lessening its value, to be void.

Moreover, it was held in the case of Gunn *vs.* Barry, 82 U. S. 610, that:

> "The State can no more impair an existing contract by a constitutional provision than by a legislative act, both are within the prohibition of the national constitution."

The Louisiana cases approving the foregoing decisons are the cases of Crain *vs.* Magee, 132 La. 311, and Blouin, *vs.* Ladet, 109 La. 710, in which decisions the Supreme Court of Louisiana declared that the interpretation of the Federal Constitution by the Federal Supreme Court was binding on it, and said:

> "To give effect to a homestead law as regards contractual debts or judicial mortgage already in existence at the time of its adoption would be to impair the obligation of contracts and to divest vested rights within the meaning of the prohibition of the Federal Constitution." 109 La. 710.
>
> "Property exempted from seizure by the Constitution of 1898 is seizable under a judgment obtained on a claim of a date anterior to its passage, because to hold that the constitution could retroactively impress that property with a new characteristic would have the effect of impairing the obligations of the parties to the contract, and depriving the judgment creditor of a right which he formerly possessed." 132 La. 311.

In this last cited case the debt was an unsecured note, which was afterwards reduced to a judgment at a time that the debtor's property was declared to be exempt from seizure under the homestead clause of the State Constitution, but our court held that the debt, evidenced by the note, existed prior to the adoption of the Constitution of

1898, and that therefore the property could be seized and sold to satisfy the judgment obtained on the note.

In the case of Winter Brine *vs.* Hartford Fire Insurance Company, 96 U. S. 627, it was held:

> "At all events, the decisions of this court are numerous that the laws which prescribe the mode of enforcing a contract, which are in existence when it is made, are so far a part of the contract that no change in these laws which seriously interfere with that enforcement are valid, because they impair its obligation within the meaning of the Constitution of the United States." (Citing Edwards *v.* Kearzey, 96 U. S. 793.)

And in the case of State of Louisiana *vs.* City of New Orleans, 102 U. S. 203, it was held that:

> "The obligation of a contract in the constitutional sense, is the means provided by law by which it can be enforced."
>
> "Whatever legislation lessens the efficacy of these means impairs the obligation. If it tends to postpone or retard the enforcement of the contract, it is in conflict with the constitutional inhibition."

These Louisiana exemption statutes if held valid and enforced will not only tend to retard, but will absolutely defeat the collection of anything on the claims of plaintiffs in error; whereas, if the same laws are held unconstitutional and are not enforced, plaintiffs in error will collect the entire amount of their debts. Therefore, we are at a loss to understand why the Supreme Court of Louisiana held that such exemption statutes only remotely impaired the obligations of the contracts involved in these cases.

In the case of Martha Barnitz *vs.* John L. Beverly, 163 U. S. 118, the Court had under consideration a redemp-

tion law, which changed the method of foreclosing mortgages, and as to prior mortgages it was held:

> "A state statute which authorizes the redemption of property sold upon foreclosure of a mortgage where no right of redemption previously existed, or which extends the period of redemption beyond the time formerly allowed, cannot constitutionally apply to a sale under a mortgage executed before its passage."

And in the case of McGahey *vs.* State of Virginia, 135 U. S. 662, at was pointed out that:

> "In ordinary cases, the decision of the highest court of a State as to the validity of its statute is binding on this court; but where the question arises as to whether a contract has been made which a state statute impairs, this court has power to decide for itself such question, whatever may be the decision of the state court."

And in this last cited case, the court also held:

> "The obligation of a contract is impaired, in the constitutional sense, by any law which prevents its enforcement, or which materially abridges the remedy for enforcing it which existed when it was contracted, and does not apply an alternative remedy equally adequate and efficacious."
>
> "A law providing that the proceeds of a life insurance policy payable to executors and administrators of a deceased person shall not be liable for his debts is unconstitutional with reference to antecedent policies and antecedent debts." Rice *vs.* Smith, 72 Miss. 42; 16 So. Rep. 17; Skinner *vs.* Holt 9 S. D. 427, 69 N. W. 595, 62 Am. S. R. 878; In Re-Heilbron 14 Washington, 536, 45 O. 153, 35 L. R. A. 602.

For a further discussion of the decision of the Supreme Court of Louisiana, the court is referred to the brief filed

by plaintiffs in error in support of its motion for re-hearing. (see pages 77 to 81 of record.)

It is respectfully submitted that the judgment of the Supreme Court of Louisiana should be reversed, annulled and set aside, and we so pray.

HAMPDEN STORY,
J. S. ATKINSON,
ROBERT ROBERTS,
Attorneys for plaintiffs in error.

In The Supreme Court Of the United States

OCTOBER TERM 1919.

706.

BANK OF MINDEN, BANK OF WEBSTER AND ROBERT ROBERTS, JR.,

Plaintiffs in Error.

vs.

MRS. LOUIE CLEMENTS,

Administatrix of the Succession of O. P. Clements, Deceased

MOTION TO DISMISS WRIT OF ERROR ON BEHALF OF THE DEFENDANT IN ERROR AND BRIEF IN SUPPORT THEREOF.

L. K. WATKINS & J. D. WILKINSON,
Attorneys for Mrs. Louie Clements, Defendant in Error.

In the above entitled cause now comes the defendant in error through her undersigned counsel and moves and prays the Court to dismiss the writ of error herein on the ground and for the reason:

1. The plaintiffs in error were without right to secure a writ of error for the causes set forth in their petition as

they could only have said questions reviewed by this Honorable Court by writ of certiorari.

2. But even if said writ of error was the proper remedy for said plaintiffs in error to pursue there is in said case no substantial Federal question in said cause giving this Court jurisdiction of said case.

3. That the so-called Federal question raised in this case is unsubstantial and frivolous and this Court is without right or jurisdiction to entertain the same.

For these reasons she prays that the writ of error herein be dismissed and for such general relief as the above and foregoing allegations may justify.

L. K. Walkins
Wilkinson

Attorneys for Mrs. Louie Clements, Defendant in Error.

Briefly stating the facts in the instant case so that the Court can determine the merits of the motion to dismiss, the facts as found by the Supreme Court of the State of Louisiana show that the husband of the defendant in error died in 1917 leaving an insolvent succession. Among the

assets of his succession was a life insurance policy in the New York Life Insurance Company for Fifteen Hundred ($1,500.00) Dollars dated February 5, 1909, and one in the Penn Mutual for Three Thousand ($3,000.00) Dollars dated May 4, 1914.

The defendant in error was appointed administratrix of the succession and tutrix of her five minor children. She collected in the aggregate Forty-Four and 33-100 Dollars from the insurance policies and in filing her Final Account declared that this amount was exempt from seizure by Act 189 of 1914 and Act 88 of 1916 of the General Assembly of the State of Louisiana.

The plaintiffs in error opposed the Final Account and Tableau of Distribution. R. 17 et seq. and among other grounds of opposition declared that since the obligations on which their indebtedness arose or was created, the Legislature of the State had enacted the two Acts in question exempting from seizure and sale the proceeds or avails of life insurance policies.

At R. 18, they claim that the obligations set forth were entered into and based upon contracts with the deceased prior to the enactment of the above named Acts and that therefore, said Acts could have no effect upon the policies insofar as they were applicable to their claims.

They also charged that the two Acts were in violation of Article 166 of the Constitution of 1913 of the State of Louisiana in that they impaired the obligation of their contract.

They also charged that the two Acts violated Article 6 of the Constitution of the State. R. 19.

They also charged "That said Acts are in violation of Article 10 of the Constitution of the United States in that they impair an obligation of the contracts herein set up which were entered into before the enactment of said laws."

The Supreme Court of the State of Louisiana found as a fact that the indebtedness claimed by the plaintiffs in error oiginated prior to the enactment of the Statute of 1914 but that since the enactment of the Statute of 1914 the notes given to represent the indebtedness had from time to time been renewed. R. 75.

The note for Six Hundred Dollars is dated Jan. 13, 1917. R. 30, and another note for $300.00 is dated March 22, 1916, R. 31, and another note for $500.00 is dated April 15, 1916, and another note for $1125.00 is dated November 20, 1916. R. 32.

It therefore, conclusively appears that the obligations sued on were executed after the passage of both the Acts of 1914 and 1916.

While under the laws of Louisiana novation is never presumed, yet by the conduct of the parties they have agreed to accept an obligation bearing date after the passage of the Acts exempting the proceeds of insurance policies from execution, and thus waived any right that they had, if they ever had any such right, to claim that the Acts in question violated the obligation of the contract between them and O. P. Clements, deceased.

But the decision of the Supreme Court of the State of Louisiana is sustainable without passing on the question of whether the Acts in question violated the obligation of the contract between the plaintiffs in error and O. P. Clements, deceased.

There can be no doubt of the right of the State to pass exemption laws, and unless the Acts themselves are made applicable to existing obligations the constitutionality of such statutes could not be question.

Nor do we understand that the plaintiffs in error question the validity of the Acts in question as written, but only question the application of the Acts to the debt asserted by them.

By taking the new notes now sued on, the plaintiffs in error while not maybe novating their debt, at least accepted

a new contract with the deceased, and in doing so read into that contract the exemption laws of 1914 and 1916. This is expressly held in the case of Denny vs. Bennett, 128 U. S. 471, 32 L. Ed. 491, where the court said:

> "State statutes limiting the right of a creditor to enforce his claims against the property of his debtor, which are in existence at the time a contract is made, are not void as impairing the obligation of the contract.
>
> "The established construction of the constitution of the United States against impairing the obligation of contracts, require that statutes of this class shall be construed to be part of all contracts made when they are in existence, and therefore cannot be held to impair their obligation."

But novation did take place. The old notes were given up and new ones taken, and this under the jurisprudence of Louisiana was a novation.

In the case of Morgan vs. Creditors 1 La. 527, 20 Am. Dec. 285, the Supreme Court of Louisiana said through Justice Martin:

> "A creditor who on receiving a new note, surrenders the first, novates his debt, etc."

Again in the case of Gardner vs. Levassieur 28, A. 679, the Court said:

"The original notes of Levassieur & Co. to the plaintiff were given up to the former with the exception, perhaps of one of them not in the possession of the plaintiff at the time. An exchange of notes took place. Plaintiff received the new notes executed in their favor by defendants in pursuance of an agreement entered into between the parties. Novation was the result."

The doctrine announced in these cases was re-affirmed in the case of Brinkhaus vs. Pavy, 51 La. Ann. 1327, but in that case the Court held there was no novation because the old notes had not been surrendered.

Therefore, the complaint of the plaintiffs in error does not rest on the unconstitutionality of the Acts of 1914 and 1916, *but rests upon an erroneous construction of these Acts by the Supreme Court of the State of Louisiana.*

In the case of King vs. West Virginia, 216 U. S. 92, this Court held that a misconstruction of a State statute by a State Court is no ground for a writ of error from the Federal Supreme Court.

Again in the case of Commercial Bank vs. Buckingham 5 How. 317, and in the case of Smith vs. Hunter 7 How. 738, the Court held where the State law is admitted to be valid and the only question is whether it has been correctly construed, the Supreme Court of the United States has no jurisdiction.

Again in the case of Snell vs. Chicago, 152 U. S. 191, the doctrine was again held that a decision of a State Court resting upon *the construction* and not upon *the validity* of a statute of the State does not present a Federal question.

The same doctrine was announced in Grand Gulf Ry. vs. Marshall, 12 How. 165.

In the case of King vs. West Virginia, supra 216 U. S. 92, the Court said:

> "The misconstruction of a State statute by a State Court cannot present a question which will sustain a writ of error from the Federal Supreme Court to a State Court."

In the case of St. Paul Ry. Co. vs. Todd County 142, U. S. 282, and in the case of Knox vs. Exchange Bank, 12 Wall 379, this Court declared, it was not authorized by the judiciary act to review the judgment of State Courts because their judgments refused to give affect to valid contracts or because those judgments in their effect impair the obligation of contracts. The Court further said that to do so, that every case decided in a State Court could be brought up by writ of error when the parties setting up a contract allege that the Court had taken a different view of its obligation to that which they held.

In the case of Turner vs. Wilkes County, 173 U. S. 461, and Lewisville Ry. Co. vs. Lewisville, 166 U. S. 709, the same doctrine is declared.

Indeed we take it that it is settled that a Federal question is not presented because a decision of a State Court misconstrues a State statute even when such misconstruction in effect impairs the obligation of contracts.

That is all that is claimed here or can be claimed, for the reason that the State had an undoubted right to pass the Statutes, but whether they were applicable to insurance policies like the ones under investigation as applied to contracts or indebtedness like those asserted by the plaintiffs in error is purely a matter of construction of the Statutes which in no manner brings into question their constitutionality.

The Supreme Court of the State of Louisiana in effect held that by taking the new notes after the passage of the Acts of 1914 and 1916 the plaintiffs in error had waived whatever right they might have had under their original indebtedness to assert that these Acts could not be urged to their prejudice.

But if there was any impairment of the obligation of the contract it was so remote and so unsubstantial as not to justify this Court in assuming jurisdiction of the case.

In the case of Deming vs. Carlisle Packing Co. 266 U. S. 103, this Court held, although a record may present in form a Federal question a motion to dismiss will be allowed where it plainly appears that the question is of such an unsubstantial character as to cause it to be devoid of all merit and therefore frivolous.

The Supreme Court of the State of Louisiana found as a fact that if there was any impairment of the obligation of the contract by the passage of the Acts in question that it was of such an unsubstantial character as to be devoid of all merit.

For these reasons we insist that even if the writ of error was properly applied for that the cause should be dismissed.

It will be noted that the opposition filed to the Final Account of the Administratrix declares that the Acts of 1914 and 1916 violated *Article* 10 of the Constitution of the United States. Turning to that Article we find that it relates exclusively to emitting bills of credit, etc., by states, and does not relate to the passage of statutes violating the obligations of any contract.

Be that as it may, it is submitted that the writ of error was inappropriate in this proceeding. The Statutes of 1914 and 1916 were assailed, but from a reading of the op-

position and the papers it appears that there was no objection to the constitutionality of the Statutes or the right of he State to enact them, and it is submitted that the right which the plaintiffs in error claim was some sort of right or privilege under the Constitution of the United States, and therefore, their appropriate remedy for a review of the decision of the Supreme Court of the State of Louisiana was by writ of certiorari and by writ of certiorari alone.

For these reasons it is respectfully submitted that the writ of error herein granted should be dismissed, and this cause should be remanded to the Supreme Court of the State of Louisiana to be by it remanded to the trial Court for execution of the judgment rendered by it.

Respectfully submitted,

L. R. Gallaway

J. D. Thurman

Attorneys for Mrs. Louie Clements, Defendant in Error.

OPINION

BANK OF MINDEN ET AL. *v.* CLEMENT, ADMINISTRATRIX OF CLEMENT.

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

No. 238. Submitted March 21, 1921.—Decided April 11, 1921.

1. A life insurance policy payable to the executors, administrators or assigns of the insured is his property and subject to the claims of his creditors. P. 128.
2. A state law exempting policies so payable and their avails from the debts of the insured is invalid under Art. I, § 10, of the Constitution, as applied to his debt under a promissory note antedating the law and to policies also antedating it though later than the note. P. 129. *Sturges* v. *Crowninshield*, 4 Wheat. 122.

146 Louisiana, 385, reversed.

THE case is stated in the opinion.

Mr. Hampden Story, Mr. J. S. Atkinson and *Mr. Robert Roberts* for plaintiffs in error.

Mr. J. D. Wilkinson for defendant in error. *Mr. L. K. Watkins* was also on the brief.

MR. JUSTICE MCREYNOLDS delivered the opinion of the court.

By Act No. 189 of 1914, the Louisiana Legislature undertook to exempt from debts of the assured the avails of insurance upon his life when payable to his estate.

Before passage of that act and while indebted to plaintiffs in error banks by notes which were renewed from time to time until his death, O. P. Clement took out two policies upon his life with loss payable to his executors, administrators or assigns. He died in 1917 and his administratrix collected the stipulated sums amounting to $4,433.33. The succession was insolvent, and the banks sought to subject the insurance money to their claims, maintaining that if construed and applied so as to exempt such funds the Act of 1914 would impair the obligations of their contracts and violate § 10, Article I, Federal Constitution. The Supreme Court of the State held that acceptance of the renewal notes did not operate as novations, but that the statute protected the insurance money without violating the Federal Constitution since the exemption "impaired the obligation of the preëxisting contract very slightly and remotely." 146 Louisiana, 385.

Section 10, Article I, of the Constitution—"No State shall . . . pass any . . . law impairing the obligation of contracts"—has been much considered by this court and often applied to preserve the integrity of contractual obligations.

When the deceased took out the policies of insurance upon his life they became his property subject to claims of his creditors. *New York Mutual Life Ins. Co.* v. *Armstrong*, 117 U. S. 591, 597; *Central Bank of Washington* v. *Hume*, 128 U. S. 195, 204; *Burlingham* v. *Crouse*, 228 U. S. 459, 471, 472; *In re Coleman*, 136 Fed. Rep. 818; *In re Bonvillain*, 232 Fed. Rep. 372; *Blinn* v. *Dame*, 207 Massachusetts, 159; *In re Heilbron's Estate*, 14 Washington, 536; *Rice* v. *Smith*, 72 Mississippi, 42; *Skinner* v. *Holt*, 9 S. Dak. 427; Joyce on Insurance, § 2341.

In *Sturges* v. *Crowninshield*, 4 Wheat. 122, 197, 198, opinion by Mr. Chief Justice Marshall, it was said: "What is the obligation of a contract? and what will impair it? It would seem difficult to substitute words which are more intelligible, or less liable to misconstruction, than those which are to be explained. A contract is an agreement, in which a party undertakes to do, or not to do, a particular thing. The law binds him to perform his undertaking, and this is, of course, the obligation of his contract. . . . Any law which releases a part of this obligation, must, in the literal sense of the word, impair it. . . . But it is not true, that the parties have in view only the property in possession when the contract is formed, or that its obligation does not extend to future acquisitions. Industry, talents and integrity constitute a fund which is as confidently trusted as property itself. Future acquisitions are, therefore, liable for contracts; and to release them from this liability impairs their obligation." And, in *Planters' Bank* v. *Sharp*, 6 How. 301, 327, opinion by Mr. Justice Woodbury: "One of the tests that a contract has been impaired is, that its value has by legislation been diminished. It is not, by the Constitution, to be impaired at all. This is not a question of degree or manner or cause, but of encroaching in any respect on its obligation, dispensing with any part of its force." *Ogden* v. *Saunders*, 12 Wheat. 213, 257;

McCracken v. *Hayward*, 2 How. 608, 612; *Edwards* v. *Kearzey*, 96 U. S. 595, 600.

So far as the statute of 1914 undertook to exempt the policies and their proceeds from antecedent debts it came into conflict with the Federal Constitution. See *Lessley* v. *Phipps*, 49 Mississippi, 790; *Johnson* v. *Fletcher*, 54 Mississippi, 628; *Rice* v. *Smith*, 72 Mississippi, 42; *In re Heilbron's Estate*, 14 Washington, 536; *Skinner* v. *Holt*, 9 S. Dak. 427; *The Homestead Cases*, 22 Grattan, 266.

The judgment of the court below must be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed.

MR. JUSTICE CLARKE dissents.